MONTANA LEGISLATIVE HISTORY

Chapter 475 1981

Bill H _____ S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-27	C	Hearing Date(s)	2-18	C
		C		2-19	C
		C			C
		C			C
Date Out	3-27	C	Date Out	2-19	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 403	2/09/81	2/14/81	2/14/81	2/14/81					
SB 404	2/09/81	2/14/81	2/14/81	2/14/81					
SB 407	2/09/81	2/14/81	2/14/81	2/14/81					
SB 411	2/10/81	2/14/81	2/14/81	2/14/81					
SB 420	2/23/81	hold to kill							
SB 421	2/23/81	hold to kill							
SB 438	2/23/81	hold to kill							
SB 468	2/14/81	2/18/81	2/19/81	2/19/81					
SB 475	2/14/81	2/18/81	2/19/81			2/19/81			
SB 477	2/14/81	2/18/81	2/19/81		2/19/81				
SB 478	2/14/81	2/18/81	2/18/81		2/18/81				
SB 479	2/14/81	2/18/81	2/18/81	2/18/81					
SB 485	3/23/81	3/25/81	3/25/81			3/25/81			
SB 486	3/23/81	3/25/81	3/25/81	tabled					

Use a separate sheet for Senate, House Bills, and Resolutions.

Senate BILL NO. 475

INTRODUCED BY Mazurek

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109, 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THROUGH 35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406 THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509, 35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607, 35-1-610 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH 35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THROUGH 35-1-1009, 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205, MCA; AND REPEALING SECTIONS 35-1-608, 35-1-613 THROUGH 35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-1-102, MCA, is amended to read:

"35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

(6) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(7) "Shareholder" means one who is a holder of record of shares in a corporation and is synonymous with the term "stockholder". If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified

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person or persons. The resolution shall set forth the classification of a shareholder who may certify; the purpose or purposes for which the certification may be made; the form of certification and information to be contained therein; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the corporation; and such other provisions with respect to the procedure as are considered necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be considered, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

~~(9) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares.~~

~~(10) "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.~~

~~(11) "Stated capital" means, at any particular time:~~

~~(a) the sum of the par value of all shares of the corporation having a par value that have been issued;~~

~~(b) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and~~

~~(c) such amounts not included in subsections (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.~~

~~Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation for the purpose of computing fees, franchise taxes, and other charges imposed by this chapter.~~

~~(12) "Surplus" means the excess of the net assets of a corporation over its stated capital.~~

~~(13) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.~~

~~(14) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.~~

~~(15) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.~~

~~(16)~~(9) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute filing under this chapter.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

Section 2. Section 35-1-108, MCA, is amended to read:

"35-1-108. General powers. Each corporation shall have power to:

(1) have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain and defend, in its corporate name;

(3) have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its

property and assets;

(6) lend money ~~to guarantee the obligations of and otherwise~~ and use its credit to assist its employees ~~and upon the affirmative vote of the holders of a majority of the outstanding shares of the corporation which are entitled to vote for directors, lend money to, guarantee the obligations of, and otherwise assist its directors and officers, but no loans shall be made by a corporation secured by its shares~~;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, associations, partnerships, joint ventures, cooperatives, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country;

(11) elect or appoint officers and agents of the corporation and define their duties and fix their compensation;

(12) make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and in time of war to make donations in aid of war activities;

(14) ~~in time of war~~, transact any lawful business in aid of ~~the United States in the prosecution of the war~~ governmental policy;

~~(15) indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of~~

~~another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation, and make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution adopted by the shareholders after notice;~~

~~(16)~~(15) pay pensions and retirement benefits and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

~~(17)~~(16) cease its corporate activities and surrender its corporate franchise;

(17) be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;

(18) have and exercise all powers necessary or convenient to effect any or all of the purposes for which

the corporation is organized."

Section 3. Section 35-1-109, MCA, is amended to read:

"35-1-109. Liability of and to ostensible corporations. ~~(1)~~ All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

~~(2) One who assumes an obligation to an ostensible corporation as such cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose."~~

NEW SECTION. Section 4. Indemnification of directors and officers. (1) As used in this section, the following definitions apply:

(a) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.

(b) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the

predecessor's existence ceased upon consummation of such transaction.

(c) "Expenses" include attorneys' fees.

(d) "Official capacity" means:

(i) when used with respect to a director, the office of director in the corporation; and

(ii) when used with respect to a person other than a director as contemplated in subsection (9), the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

(e) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(f) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative.

(2) (a) A corporation may indemnify any person made a party to any proceeding by reason of the fact that he is or was a director if:

(i) he conducted himself in good faith; and

(ii) he reasonably believed:

(A) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(B) in all other cases, that his conduct was at least not opposed to its best interests; and

(iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) Indemnification may be made against judgments, penalties, fines, settlements, and reasonable expenses, actually incurred by the person in connection with the proceeding. However, if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect to any proceeding in which the person shall have been adjudged to be liable to the corporation. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent may not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

(3) A director may not be indemnified under subsection (2) in respect to any proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he has been adjudged to be liable on the basis that personal benefit was improperly

received by him.

(4) (a) Unless limited by the articles of incorporation:

(i) a director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in subsection (2) shall be indemnified against reasonable expenses incurred by him in connection with the proceeding; and

(ii) a court of appropriate jurisdiction, upon application of a director and such notice as the court shall require, may order indemnification in the following circumstances:

(A) if it determines a director is entitled to reimbursement under subsection (4)(a)(1), the court shall order indemnification, in which case the director shall be entitled to recover the expenses of securing such reimbursement; or

(B) if it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the standards of conduct set forth in subsection (2) or has been adjudged liable under subsection (3), the court may order such indemnification as the court considers proper, except that indemnification with respect to any proceeding by or in the right of the corporation or in which liability has been

adjudged pursuant to subsection (3) shall be limited to expenses.

(b) A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

(5) (a) No indemnification under subsection (2) may be made by the corporation unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standards of conduct set forth in subsection (2). Such determination shall be made:

(i) by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or

(ii) if such a quorum cannot be obtained, then by a majority vote of a committee of the board, duly designated to act in the matter by a majority vote of the full board, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding; or

(iii) by special legal counsel selected by the board of directors or a committee thereof by vote as set forth in (a) or (b) of subsection (5) or, if the requisite quorum of the full board cannot be obtained and such committee cannot be

established, then by a majority vote of the full board, in which selection directors who are parties may participate; or

(iv) by the shareholders.

(b) Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in subsection (5)(a)(iii) for the selection of such counsel. Shares held by directors who are parties to the proceeding may not be voted on the subject matter under this subsection.

(6) Reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding upon receipt by the corporation of:

(a) a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation as authorized in this section; and

(b) a written undertaking by or on behalf of the director to repay such amount if it is ultimately determined

that he has not met such standard of conduct and after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The undertaking required by this subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make the repayment. Determinations and authorizations of payments under this subsection shall be made in the manner specified in subsection (5).

(7) No provision for the corporation to indemnify or to advance expenses to a director who is made a party to a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except as contemplated by subsection (10), is valid unless consistent with this section or, to the extent that indemnity hereunder is limited by the articles of incorporation, consistent therewith. Nothing contained in this section limits the corporation's ability to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(8) For purposes of this section, the corporation shall be considered to have requested a director to serve an employee benefit plan where the performance by him of his

duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be considered fines. Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be considered to be for a purpose that is not opposed to the best interests of the corporation.

(9) Unless otherwise limited by the articles of incorporation:

(a) an officer of the corporation shall be indemnified as and to the extent provided in subsection (4) for a director and shall be entitled to seek indemnification pursuant to the provisions of subsection (4) to the same extent as a director;

(b) a corporation has the power to indemnify and to advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to a director pursuant to this section; and

(c) a corporation, in addition, has the power to indemnify and to advance expenses to an officer, employee, or agent who is not a director to such further extent,

consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

(10) A corporation has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise or of an employee benefit plan, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(11) Any indemnification of or advance of expenses to a director in accordance with this section, if arising out of a proceeding by or in the right of the corporation, shall be reported in writing to the shareholders with the notice of the next shareholders' meeting or before.

NEW SECTION. Section 5. Loans to employees and directors. A corporation may not lend money to or use its credit to assist its directors without authorization in the particular case by its shareholders but may lend money to

and use its credit to assist any officer or employee of the corporation or of a subsidiary, including any such officer or employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

Section 6. Section 35-1-202, MCA, is amended to read:

"35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized, which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter;

(d) the aggregate number of shares which the corporation shall have authority to issue~~;--if--such--shares are--to--consist-of-one-class-only,-the-par-value-of-each-of such-shares-or-a-statement--that--all--of--such--shares--are without--par--value~~ or, if such shares are to be divided into classes, the number of shares of each class ~~and--a statement--of-the-par-value-of-the-shares-of-each-such-class or-that-such-shares-are-to-be-without-par-value~~;

(e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of

the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional ~~or treasury~~ shares of the corporation;

~~(h)--any-provision,-not-inconsistent--with--law,--which the--incorporators--elect--to--set--forth-in-the-articles-of incorporation-for-the-regulation-of-the-internal-affairs--of the--corporation,--including--any--provision-restricting-the transfer-of--shares--and--any--provision--which--under--this chapter--is--required--or--permitted--to-be-set-forth-in-the bylaws~~;

~~(i)~~(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

~~(j)~~(i) the number of directors constituting the initial board of directors and the names and addresses of

the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

~~(k)~~(i) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) the direction of the management of the business and the regulation of the affairs of the corporation;

(b) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(c) the par value of any authorized shares or class of shares;

(d) any provision that, under this chapter, is required or permitted to be set forth in the bylaws.

~~(2)~~(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter."

Section 7. Section 35-1-206, MCA, is amended to read:

"35-1-206. Power to amend articles of incorporation. (1) A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired so long as its articles of incorporation as amended

contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment and if a change in shares or the rights of shareholders or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

(2) In particular and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as to:

(a) change its corporate name;

(b) change its period of duration;

(c) change, enlarge, or diminish its corporate purposes;

(d) increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;

(e) ~~increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued~~ provide, change, or eliminate any provision with respect to the par value of any shares or class of shares;

(f) exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;

(g) change the designation of all or any part of its

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shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;

~~(h) change shares having a par value, whether issued or unissued, into the same or a different number of shares without par, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;~~

~~(i)~~ (h) change the shares of any class, whether issued or unissued ~~and whether with or without par value~~, into a different number of shares of the same class or into the same or a different number of shares ~~either with or without par value~~, of other classes;

~~(j)~~ (i) create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;

~~(k)~~ (j) cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;

~~(l)~~ (k) divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares

of such series;

~~(m)~~ (l) authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

~~(n)~~ (m) authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

~~(o)~~ (n) revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

~~(p)~~ (o) grant to shareholders of any class the preemptive right to acquire additional ~~or treasury~~ shares of the corporation, whether then or thereafter authorized."

Section 8. Section 35-1-207, MCA, is amended to read:

"35-1-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) ~~The~~ If shares have been issued, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of or stock dividend in the corporation's own shares or solely to do so and to change the number of authorized shares in proportion thereto may be adopted by the board of directors and the provisions for adoption by shareholders do not apply, unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation that contain a statement that, except for the designated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation, together with the designated amendment, supersede the original articles of incorporation and all amendments thereto.

(b) Written notice setting forth the proposed

amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting. ~~If the amendment shall involve an increase of authorized shares, at least 30 days' notice of the meeting for acting upon such amendment shall be given to shareholders entitled to vote at such meeting.~~

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting."

Section 9. Section 35-1-208, MCA, is amended to read:

"35-1-208. Class voting on amendments. The holders of the outstanding shares of a class shall be entitled to vote

as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of such class;

~~(2) increase or decrease the par value of the shares of such class;~~

~~(3)~~(2) effect an exchange, reclassification, or cancellation of all or part of the shares of such class;

~~(4)~~(3) effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of such class;

~~(5)~~(4) change the designations, preferences, limitations, or relative rights of the shares of such class~~.~~. If any proposed amendment would change the designations, preferences, or relative rights of the shares of any series of such class but would not affect all of the shares of such class, then only the shares of the series so affected by the amendment may be considered a separate class for the purpose of this section.

~~(6)~~(5) change the shares of such class~~, whether with or without par value,~~ into the same or a different number of shares~~, either with or without par value,~~ of the same class or another class or classes;

~~(7)~~(6) create a new class of shares having rights and

preferences prior and superior to the shares of such class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of such class;

~~(8)~~(7) in the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;

~~(9)~~(8) limit or deny existing preemptive rights of the shares of such class;

~~(10)~~(9) cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared."

Section 10. Section 35-1-209, MCA, is amended to read:

"35-1-209. Articles of amendment -- contents. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such articles and shall set forth:

(1) the name of the corporation;

(2) the ~~amendment~~ amendments so adopted;

(3) the date of the adoption of the amendment by the shareholders or the board of directors when no shares have

been issued;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or, if no shares have been issued, a statement to that effect;

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;

~~(7) if such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.~~"

Section 11. Section 35-1-211, MCA, is amended to read:

"35-1-211. Effect of certificate of amendment. (1) Upon An amendment becomes effective upon the issuance of the

certificate of amendment by the secretary of state, ~~the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly~~ or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as shall be provided for in the articles of amendment.

(2) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than shareholders. In the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason."

Section 12. Section 35-1-212, MCA, is amended to read:

"35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain

only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to

all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(ii) file one of such duplicate originals in his

office;

(iii) issue a certificate of amendment to which he shall affix the other duplicate original.

(c) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(4) ~~Upon~~ The amendment becomes effective upon the issuance of the certificate of amendment by the secretary of state, ~~the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly~~ or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as may be provided for in the articles of amendment, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation."

Section 13. Section 35-1-213, MCA, is amended to read:

"35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly

adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide

for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected;~~.~~

~~(f) if the restated articles of incorporation effect a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement expressed in dollars of the amount of stated capital as changed by the restated articles of incorporation.~~"

Section 14. Section 35-1-214, MCA, is amended to read:

"35-1-214. Bylaws -- power in directors -- contents. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation."

Section 15. Section 35-1-301, MCA, is amended to read:

"35-1-301. Corporate name. (1) The corporate name:

(a) shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain an

abbreviation of one of such words;

~~(1)~~(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

~~(2)~~(c) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter~~.~~, except that this provision does not apply if the applicant files with the secretary of state either of the following:

(i) the written consent of such other corporation or holder of a reserved or registered name to use the name or a deceptively similar name with one or more words added to make such name distinguishable from such other name; or

(ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged or that is formed by the reorganization or consolidation of one or more domestic or

foreign corporations or upon a sale, lease, or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of or is authorized to transact business in this state."

Section 16. Section 35-1-401, MCA, is amended to read:

"35-1-401. Board of directors. ~~(1)~~ ~~The~~ All corporate powers shall be exercised by or under authority of and the business and affairs of a corporation shall be managed ~~by~~ under the direction of a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

(2) A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

(3) (a) In performing his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(ii) counsel, public accountants, or other persons as to matters that the director reasonably believes to be within such person's professional or expert competence; or

(iii) a committee of the board upon which he does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(b) A director may not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

(c) A person who so performs his duties has no liability by reason of being or having been a director of the corporation.

(4) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken is presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to such action with the secretary of the meeting before the adjournment thereof or forwards the dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action."

Section 17. Section 35-1-402, MCA, is amended to read:

"35-1-402. Number, election, and term of directors. (1) The ~~number~~ board of directors of a corporation shall ~~be not less than three~~ consist of one or more members. ~~Subject to such limitation, the~~ The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of

incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified."

Section 18. Section 35-1-404, MCA, is amended to read:

"35-1-404. Place and notice of directors' meetings. (1) Meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated thereby shall

be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors or any committee designated thereby need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

(3) Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means constitutes presence in person at a meeting."

Section 19. Section 35-1-406, MCA, is amended to read:

"35-1-406. Action by directors without a meeting. (1) Any Unless otherwise provided by the articles of incorporation or bylaws, any action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the

directors or of a committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors or all of the members of the committee, as the case may be, entitled to vote ~~with respect to~~ on the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote and may be stated in any articles or document filed with the secretary of state under this chapter."

Section 20. Section 35-1-407, MCA, is amended to read:

"35-1-407. Executive and other committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors.

~~(2)~~--No except that no such committee shall have the authority ~~of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange, or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its~~

~~business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation,~~ to:

(a) authorize distributions;

(b) approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders;

(c) designate, candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof;

(d) amend the bylaws;

(e) approve a plan of merger not requiring shareholder approval;

(f) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or

(g) authorize or approve the issuance or sale of or any contract to issue or sell shares or designate the terms of a series of a class of shares, except that the board of directors, having acted regarding general authorization for the issuance or sale of shares or any contract therefor and, in the case of a series, the designation thereof may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or

other plans, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including without limitation the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the secretary of state under this chapter.

~~(3)~~(2) The designation of any such committee, and the delegation thereto of authority, or the action by such committee pursuant to such authority ~~shall not operate to relieve the board of directors or any member thereof of any responsibility imposed by law~~ does not alone constitute compliance by any member of the board of directors not a member of the committee in question with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances."

Section 21. Section 35-1-408, MCA, is amended to read:

"35-1-408. Vacancies and removal of directors. (1) Any vacancy occurring in the board of directors may be filled by

the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

(2) At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. ~~The~~ Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds of the shares then entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the corporation has fewer than 100 shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

(3) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then

cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which he is a part."

Section 22. Section 35-1-409, MCA, is amended to read:

"35-1-409. Liability of directors in certain cases. (1) In addition to any other liabilities, ~~imposed by law upon directors of a corporation~~:

~~(a) Directors of a corporation~~ a director who vote votes for or assent assents to ~~the declaration of any dividend or other~~ any distribution ~~of the assets of a corporation to its shareholders~~ contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall, unless he complies with the standard provided in this chapter for the performance of the duties of directors, be ~~jointly and severally~~ liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount ~~of such dividend which is paid~~ or the value of such ~~assets which are distributed~~ distribution in excess of the amount of such ~~dividend or~~ distribution which could have been ~~paid or distributed~~ made without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

~~(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions~~

~~of this chapter shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this chapter.~~

~~(c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of or making adequate provision for all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed to the extent that such debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.~~

~~(d) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation or the making of any loan secured by shares of the corporation, except as authorized by other provisions of this chapter, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.~~

~~(2) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented~~

~~to--the--action-taken-unless-his-dissent-shall-be-entered-in the-minutes-of-the-meeting--or--unless--he--shall--file--his written-dissent-to-such-action-with-the-person-acting-as-the secretary--of--the-meeting-before-the-adjournment-thereof-or shall-forward-such-dissent-by-certified-or--registered--mail to--the--secretary--of-the-corporation-immediately-after-the adjournment-of-the-meeting.-Such-right-to-dissent-shall--not apply-to-a-director-who-voted-in-favor-of-such-action.~~

~~(3)--A--director--shall-not-be-liable-under-subsections (1)(a),-(1)(b),-or-(1)(c)-of-this-section-if-he--relied--and acted--in--good--faith--upon--financial--statements--of--the corporation--represented--to--him--to--be--correct--by---the president--or--the-officer-of-such-corporation-having-charge of-its-books-of-account-or-stated-in-a-written-report-by--an independent-public-or-certified-public-accountant-or-firm-of such--accountants--fairly-to-reflect-the-financial-condition of-such-corporation,-nor-shall-he-be-so-liable--if--in--good faith--in--determining--the--amount--available--for-any-such dividend-or-distribution-he-considered-the-assets-to--be--of their-book-value.~~

~~(4)~~(2) Any director against whom a claim shall be asserted under or pursuant to this section for the ~~payment~~ making of a ~~dividend-or-other~~ distribution ~~of-assets-of-a corporation~~ and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted

or received any such ~~dividend--or--assets~~ distribution, knowing such ~~dividend-or~~ distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

~~(5)~~(3) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from ~~the~~ any other directors who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in this chapter for the performance of the duties of a director."

NEW SECTION. Section 23. Director -- conflicts of interest. (1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested is either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purposes if:

(a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose

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without counting the votes or consents of such interested directors;

(b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent, in which vote or consent such interested directors may participate to the extent that they are also shareholders; or

(c) the contract or transaction is fair and reasonable to the corporation.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

Section 24. Section 35-1-501, MCA, is amended to read:

"35-1-501. Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(2) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. If the annual meeting is not held within any 18-month period, the district court with jurisdiction for the location of the corporation's registered office or principal place of

business may, on application of any shareholder, summarily order a meeting to be held. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than ~~one-half~~ one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws."

Section 25. Section 35-1-506, MCA, is amended to read:

"35-1-506. Voting of shares -- proxies. (1) Each outstanding share, regardless of class, shall be entitled to one vote, and each fractional share shall be entitled to a corresponding fractional vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this chapter.

(2) Neither ~~treasury shares--nor~~ shares of its own stock held by the corporation in a fiduciary capacity nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation shall be voted at any meeting or counted in determining the total

number of outstanding shares at any given time.

(3) (a) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact.

(b) No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy. Every proxy is revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

(c) The authority of the holder of a proxy to act may not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

(d) Except when another provision has been made by written agreement between the parties, the record holder of shares, which he holds as pledgee or otherwise as security or which belong to another, shall issue a proxy to vote or take other action thereon to the pledgor or to such owner of such shares, upon demand therefor and payment of necessary expenses thereof.

(e) A shareholder may not sell his vote or issue a proxy to vote to any person for any sum of money or anything

of value, except as authorized in this section and 35-1-508.

(f) A proxy that is entitled "irrevocable proxy" and that states that it is irrevocable is irrevocable when it is held by any of the following or a nominee of any of the following:

(i) a pledgee;

(ii) a person who has purchased or agreed to purchase the shares;

(iii) a creditor or creditors of the corporation who extend or continue credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit;

(iv) a person who has contracted to perform services as an officer of the corporation, if:

(A) a proxy is required by the contract of employment; and

(B) the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for; or

(v) a person designated by or under an agreement under 35-1-508(3).

(g) Notwithstanding a provision in a proxy stating

that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, the debt of the corporation is paid, the period of employment provided for in the contract of employment has terminated, or the agreement under 35-1-508(3) has terminated; and in a case provided for in (iii) or (iv) of subsection (3)(f), it becomes revocable 5 years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This subsection does not affect the duration of a revocable proxy under subsection (3)(b).

(h) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the certificate representing such shares.

(4) At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal or by distributing such votes on the same

principle among any number of such candidates.

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe or, in the absence of such provision, as the board of directors of such corporation may determine.

(6) Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name.

(7) Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(8) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(9) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(10) On and after the date on which written notice of

redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares."

Section 26. Section 35-1-508, MCA, is amended to read:

"35-1-508. Voting ~~trust------inspection--of--agreement~~ trusts and agreements among shareholders. (1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares for which the voting trust certificates held by each are issued, and such trustee or trustees shall deposit a copy of such record with the

corporation at its registered office.

(2) The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of ~~a--beneficial interest in the~~ record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(3) Agreements among shareholders regarding the voting of their shares are valid and enforceable in accordance with the terms of the agreements. Such agreements are not subject to the provisions of this section regarding voting trusts."

Section 27. Section 35-1-509, MCA, is amended to read:

"35-1-509. Action by shareholders without a meeting. (1) Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

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(2) Such consent shall have the same effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the secretary of state under this chapter."

Section 28. Section 35-1-511, MCA, is amended to read:

"35-1-511. Shareholders' preemptive rights. The shareholders of a corporation shall have no preemptive right to acquire unissued ~~or treasury~~ shares of the corporation or obligations of the corporation convertible into such shares, except to the extent, if any, that such right is provided in the articles of incorporation."

NEW SECTION. Section 29. Control of directors by shareholders. (1) A provision in the articles of incorporation otherwise prohibited by law because it improperly restricts the board of directors in its management of the business of the corporation or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them all or any part of such management otherwise within the authority of the board under this chapter shall nevertheless be valid:

(a) if all the incorporators or holders of record of all outstanding shares, whether or not having voting power, have authorized such provision in the articles of incorporation or an amendment thereof; and

(b) if, subsequent to the adoption of such provision,

shares are transferred or issued only to persons who had knowledge or notice thereof or consented in writing to such provision.

(2) A provision authorized by subsection (1) is valid only if no shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

(3) Except as provided in subsection (4), an amendment to strike out a provision authorized by subsection (1) shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or by the holders of such greater proportion of shares as may be required by the articles of incorporation for that purpose.

(4) Alternatively, if a provision authorized by subsection (1) has ceased to be valid under this section, the board may authorize articles of amendment under 35-1-209, eliminating the provision. Such articles shall set forth the event by reason of which the provision ceased to be valid.

(5) The effect of any provision authorized by subsection (1) is to relieve the directors and impose upon the shareholders authorizing the provision or consenting thereto the liability for managerial acts or omissions that

is imposed on directors by this chapter to the extent that and so long as the discretion or powers of the board in its management of corporate affairs is controlled by any such provision.

(6) If the articles of incorporation of any corporation contain a provision authorized by subsection (1), the existence of the provision must be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

Section 30. Section 35-1-601, MCA, is amended to read:

"35-1-601. Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes~~--any--or--all--of--which classes--may--consist--of--shares--with--par-value-or-shares without-par--value~~ with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter or the ~~constitution~~ Constitution of the State of Montana.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special

classes:

(a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(b) entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) having preference over any other class or classes of shares as to the payment of dividends;

(d) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(e) convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation~~, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted~~.

(3) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on such terms and conditions as may be

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provided by resolutions of the board of directors."

Section 31. Section 35-1-602, MCA, is amended to read:

"35-1-602. Issuance of shares of preferred or special classes in series -- filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted;

(f) voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the

relative rights and preferences thereof;

(c) the date of adoption of such resolution;

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) return the other duplicate original to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation."

Section 32. Section 35-1-605, MCA, is amended to read:

"35-1-605. ~~Consideration--for~~ Issuance of shares. ~~(1)~~

~~Shares--having--a--par--value--may--be---issued---for---such consideration--expressed--in--dollars,-not-less-than-the-par value-thereof,-as-shall-be-fixed-from-time-to--time--by--the board--of--directors.~~ Subject to any restrictions in the articles of incorporation:

~~(2)~~(1) ~~Shares-without-par-value~~ shares may be issued for such consideration ~~expressed-in-dollars-as-may-be-fixed from-time-to-time-by--the--board--of--directors--unless--the articles--of--incorporation--reserve-to-the-shareholders-the right-to-fix-the-consideration,-in-the-event-that-such-right be-reserved-as-to-any-shares,-the-shareholders-shall,--prior to--the-issuance-of-such-shares,-fix-the-consideration-to-be received-for-such-shares-by-a--vote--of--the--holders--of--a majority--of--all-shares-entitled-to-vote-thereon,~~ as may be authorized by the board of directors establishing a price in money or other consideration, a minimum price, general formula, or method by which the price will be determined; and

(2) upon authorization by the board of directors, the corporation may issue its own shares in exchange for or in conversion of its outstanding shares or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series to effectuate stock dividends or splits, and any such transaction does not require consideration provided that no such issuance of shares of

any class or series may be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation or is authorized by an affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which the distribution is to be made.

~~(3) Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.~~

~~(4) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.~~

~~(5) In the event of a conversion of shares or in the event of an exchange of shares with or without par value for the same or a different number of shares with or without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange or conversion shall be deemed to be:~~

~~(a) the stated capital then represented by the shares so exchanged or converted;~~

~~(b) that part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and~~

~~(c) any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.~~"

Section 33. Section 35-1-606, MCA, is amended to read:

"35-1-606. Modes of payment for shares. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, subject to the provisions of 35-1-604, such shares shall be ~~deemed to be fully paid and~~ nonassessable.

(2) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive."

Section 34. Section 35-1-607, MCA, is amended to read:

"35-1-607. Stock rights and options. (1) Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options

entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option.

(2) If such rights or options are to be issued to directors, officers, or employees as such of the corporation or of any subsidiary thereof and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan theretofore approved by such a vote of shareholders ~~and set forth or incorporated by reference in the instrument evidencing each such right or option.~~

(3) In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. ~~The price or prices to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.~~"

Section 35. Section 35-1-610, MCA, is amended to read:

"35-1-610. ~~Certificates representing shares~~ Shares represented by certificates and uncertificated shares. (1) The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or vice-chairman of the board of directors or the president or a vice-president and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. ~~The~~ Any or all of the signatures ~~of the president or vice-president and the secretary or assistant secretary~~ upon a certificate may be ~~facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar other than the corporation itself or an employee of the corporation~~ facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate or shall state that the corporation will furnish

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to any shareholder, upon request and without charge, a full statement of:

(a) the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued; and

(b) if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Each certificate representing shares shall state upon the face thereof:

(a) that the corporation is organized under the laws of this state;

(b) the name of the person to whom issued;

(c) the number and class of shares and the designation of the series, if any, which such certificate represents; ~~and~~

~~(d) the par value of each share represented by such certificate or a statement that the shares are without par value.~~

(4) No certificate shall be issued for any share until ~~such share is fully paid~~ the consideration established for its issuance has been paid.

(5) Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to subsections (2) and (3). Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series must be identical."

Section 36. Section 35-1-611, MCA, is amended to read:

"35-1-611. Issuance of fractional shares or scrip. A corporation may ~~but shall not be obliged to~~:

(1) issue ~~a certificate for a fractional~~ fractions of a share, either represented by a certificate or uncertificated;

(2) arrange for the disposition of fractional interests by those entitled thereto;

(3) pay in money the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) ~~and by action of its board of directors may~~ issue ~~in lieu thereof~~ scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share or an uncertificated full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or subject to any other conditions which the board of directors may deem advisable."

Section 37. Section 35-1-612, MCA, is amended to read:

"35-1-612. ~~Right~~ Power of corporation to acquire ~~and dispose of~~ its own shares ~~---restrictions~~. (1) A corporation

shall have the ~~right~~ power to ~~purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of~~ its own shares. ~~But purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor and, if the articles of incorporation so permit or with the affirmative vote of the holders of at least two-thirds of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.~~ All of its own shares acquired by a corporation, upon acquisition, constitute authorized but unissued shares unless the articles of incorporation provide that they may not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.

(2) ~~To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares and upon the disposition or cancellation of any such shares, the restriction shall be removed pro tanto.~~ If the number of authorized shares is reduced by an acquisition, the corporation shall, no later than the time it files its next annual report under this chapter with the secretary of state, file a statement of cancellation showing the reduction in the authorized shares. The statement of

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cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall set forth:

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

~~(3) Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of~~

~~(a) eliminating fractional shares~~

~~(b) collecting or compromising indebtedness to the corporation~~

~~(c) paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter~~

~~(d) effecting, subject to the other provisions of this chapter, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.~~

(3) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall,

when all fees and franchise taxes have been paid as prescribed in this chapter:

(a) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) return the other duplicate original to the corporation or its representative.

~~(4) No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.~~"

NEW SECTION. Section 38. Restriction on transfer of shares. (1) A written restriction on the transfer or registration of transfer of shares of a corporation, if permitted by this section and noted conspicuously on the certificate representing such shares, may be enforced against the holder of the restricted shares or any successor or transferee of the holder, including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(2) A restriction on the transfer or registration of transfer of shares of a corporation may be imposed by the articles of incorporation, the bylaws, or an agreement among any number of shareholders or among such holders and the corporation. No restriction so imposed is binding with respect to shares issued prior to the adoption of the restriction unless the holders of the shares are parties to an agreement or voted in favor of the restriction.

(3) A restriction on the transfer of shares of a corporation is permitted by this section if it:

(a) obligates the holder of the restricted shares to offer to the corporation, to any other holders of shares of the corporation, to any other person, or to any combination of the foregoing a prior opportunity, to be exercised within a reasonable time, to acquire the restricted shares;

(b) obligates the corporation, any holder of shares of the corporation, any other person, or any combination of the foregoing to purchase the shares which are the subject of an agreement respecting the purchase and sale of the restricted shares;

(c) requires the corporation or the holder of any class of shares of the corporation to consent to any proposed transfer of the restricted shares or to approve the proposed transferee of the restricted shares; or

(d) prohibits the transfer of the restricted shares to

designated persons or classes of persons, and the designation is not manifestly unreasonable.

(4) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under subchapter S of the United States Internal Revenue Code (26 U.S.C.A. 1371, et seq.) is conclusively presumed to be for a reasonable purpose.

(5) Any other lawful restriction on transfer or registration of transfer of shares is permitted by this section.

(6) Except as otherwise provided in this section, the transfer of shares and the certificates representing such shares are governed by Title 30, chapter 8.

NEW SECTION. Section 39. Distributions to shareholders. (1) Subject to any restrictions in the articles of incorporation, the board of directors may authorize and the corporation may make distributions, except that no distribution may be made if, after giving effect thereto, either:

(a) the corporation would be unable to pay its debts as they become due in the usual course of its business; or

(b) the corporation's total assets would be less than the sum of its total liabilities and, unless the articles of incorporation permit otherwise, the maximum amount that then

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would be payable in any liquidation in respect of all outstanding shares having preferential rights in liquidation.

(2) Determinations under subsection (1)(b) may be based upon:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(3) In the case of a purchase, redemption, or other acquisition of a corporation's shares, the effect of a distribution must be measured as of the date money or other property is transferred or debt is incurred by the corporation or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, whichever is earlier. In all other cases, the effect of a distribution shall be measured as of the date of its authorization if payment occurs within 120 days after the authorization date or as of the date of payment if payment occurs more than 120 days after the authorization date.

(4) Indebtedness of a corporation incurred or issued to a shareholder in a distribution in accordance with this section must be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the

extent subordinated by agreement.

Section 40. Section 35-1-801, MCA, is amended to read:

"35-1-801. Procedure for merger, consolidation, and share exchange. (1) (a) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

~~(2)~~(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

~~(a)~~(i) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

~~(b)~~(ii) the terms and conditions of the proposed merger;

~~(c)~~(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving corporation or any other corporation or, in whole or in part, into cash or other property;

~~(d)~~(iv) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

~~(e)~~(v) such other provisions with respect to the

proposed merger as are deemed necessary or desirable.

(2) (a) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each board, approve a plan of consolidation setting forth:

(i) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(ii) the terms and conditions of the proposed consolidation;

(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or any other corporation or, in whole or in part, into cash or other property;

(iv) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; and

(v) such other provisions with respect to the proposed consolidation as are considered necessary or desirable.

(3) (a) All the issued or all the outstanding shares

of one or more classes of any domestic corporation may be acquired through the exchange of all shares of such class or classes by another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of exchange setting forth:

(i) the name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation;

(ii) the terms and conditions of the proposed exchange;

(iii) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or, in whole or in part, for cash or other property; and

(iv) such other provisions with respect to the proposed exchange as are considered necessary or desirable.

(c) The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation through a voluntary exchange or otherwise, by agreement with the shareholders."

Section 41. Section 35-1-803, MCA, is amended to read:

"35-1-803. Approval of shareholders required. (1) The board of directors of each corporation, in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange, upon approving such plan of merger, ~~or~~ plan of consolidation, or exchange, shall by resolution direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger, ~~or~~ consolidation, or exchange. A copy or a summary of the plan of merger, ~~or plan of~~ consolidation, or exchange, as the case may be, shall be included in or enclosed with such notice.

(3) At each such meeting a vote of the shareholders shall be taken on the proposed plan ~~of merger or consolidation~~. The plan ~~of merger or consolidation~~ shall be approved upon receiving the affirmative vote of the holders

of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan ~~of merger or consolidation~~ shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan ~~of merger or consolidation, as the case may be~~ contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class or, in the case of an exchange, if the class is included in the exchange.

(4) After ~~such~~ the approval by a vote of the shareholders of each ~~corporation~~ of these corporations and at any time prior to the filing of the articles of merger, or consolidation, or exchange, the merger, ~~or~~ consolidation, or exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan ~~of merger or consolidation~~.

(5) (a) Notwithstanding the provisions of subsections (1) through (3), submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not

required if:

(i) the articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger;

(ii) each holder of shares of the surviving corporation that were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after;

(iii) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of voting shares outstanding immediately before the merger; and

(iv) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of participating shares outstanding immediately before the merger.

(b) As used in subsection (5)(a):

(i) "voting shares" means shares which entitle their holders to vote unconditionally in elections of directors;

(ii) "participating shares" means shares which entitle their holders to participate without limitation in distribution of earnings or surplus."

Section 42. Section 35-1-804, MCA, is amended to read:

"35-1-804. Articles of merger, or consolidation, or exchange -- contents -- filing. (1) Upon ~~such approval~~ receiving the approvals required by 35-1-801 and 35-1-803, articles of merger, ~~or~~ articles of consolidation, or exchange shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers of each corporation signing such articles and shall set forth:

(a) the plan of merger, ~~or the plan of~~ consolidation, or exchange;

(b) as to each corporation, either:

(i) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(ii) a statement that the vote of shareholders is not required by virtue of 35-1-804(5); and

(c) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against such plan, respectively, and, if the shares of any

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class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) Duplicate originals of the articles of merger, ~~or articles of~~ consolidation, or exchange shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as prescribed in this chapter ~~prescribed~~:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of merger, ~~or a certificate of~~ consolidation, or exchange to which he shall affix the other duplicate original.

(3) The certificate of merger, ~~or certificate of~~ consolidation, or exchange, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving, ~~or new~~, or acquiring corporation, as the case may be, or its representative."

Section 43. Section 35-1-805, MCA, is amended to read:

"35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the

outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation;

(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or ~~the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation~~ of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of its officers signing such articles and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of

the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) issue a certificate of merger to which he shall affix the other duplicate original.

(5) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative."

Section 44. Section 35-1-806, MCA, is amended to read:

"35-1-806. Effect of merger, or consolidation, or

exchange. (1) ~~Upon~~ A merger, consolidation, or exchange becomes effective upon the issuance of ~~the~~ a certificate of merger, ~~or the certificate of~~ consolidation, or exchange by the secretary of state, ~~the merger or consolidation shall be~~ effected or on a later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as provided for in the plan.

(2) When ~~such~~ a merger or consolidation has ~~been~~ effected become effective:

(a) ~~The~~ the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) ~~The~~ the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) ~~Such~~ the surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) ~~Such~~ the surviving or new corporation shall thereupon and thereafter possess all the rights, privileges,

immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed. The title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) ~~Such~~ the surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) ~~In~~ in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its

articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

(3) When a merger, consolidation, or exchange has become effective, the shares of the corporation or corporations party to the plan that are to be converted or exchanged under the terms of the plan shall cease to exist, in the case of a merger or consolidation, or be considered to be exchanged, in the case of an exchange. The holders of such shares are thereafter entitled to only the shares, obligations, other securities, cash, or other property into which they have been converted or for which they have been exchanged in accordance with the plan and subject to any rights under 35-1-810."

Section 45. Section 35-1-807, MCA, is amended to read:

"35-1-807. Merger, or consolidation, or exchange of shares between ~~of~~ domestic and foreign corporations. ~~(1)~~ One or more foreign corporations and one or more domestic corporations may be merged, ~~or~~ consolidated, or participate in an exchange in the following manner if such merger, ~~or~~ consolidation, or exchange is permitted by the laws of the

state under which each such foreign corporation is organized:

~~(a)~~(1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger, or consolidation, or exchange, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

~~(b)~~(2) If the surviving or new corporation, ~~as the case may be,~~ in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

~~(i)~~(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

~~(ii)~~(b) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

~~(iii)~~(c) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

~~(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.~~

~~(3) At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.~~"

Section 46. Section 35-1-808, MCA, is amended to read:

"35-1-808. Sale of assets in regular course of business and mortgage or pledge of assets. The sale, lease, exchange, or other disposition of all or substantially all the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or

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not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such case no authorization or consent of the shareholders shall be required."

Section 47. Section 35-1-809, MCA, is amended to read:

"35-1-809. Sale of assets not in regular course of business -- shareholder approval. A sale, lease, exchange, or other disposition of all or substantially all the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless in its discretion may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third

parties under any contracts relating thereto, without further action or approval by shareholders.

~~(5)--The-shareholders-of-a-corporation-may,-by-a--vote of--the--holders--of-the-number-of-shares-required-to-change the-articles-of--incorporation--of--such--corporation--at--a meeting--duly--called--upon--not--less-than-30-days'-notice, amend-the-articles-of-incorporation-to--give--the--board--of directors--general--authority--to--sell,-lease,-exchange,-or otherwise--dispose--of--all--or--substantially--all--of--the property--and--assets,--with--or-without-the-good-will-of-a corporation-upon-such-conditions-and-for-such-consideration, which-may-consist-in-whole-or-in-part-of-money-or--property, real-or-personal,-including-shares-of-any-other-corporation, domestic--or-foreign,-as-shall-be-authorized-by-the-board-of directors.~~"

Section 48. Section 35-1-810, MCA, is amended to read:

"35-1-810. Right of shareholders to dissent and obtain payment for shares. (1) Any shareholder of a corporation shall have the right to dissent from, and to obtain payment for his shares in the event of, any of the following corporate actions:

(a) any plan of merger or consolidation to which the corporation is a party, except as provided in subsection (3); or

(b) any sale or exchange of all or substantially all

of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within 1 year after the date of sale;

(c) any plan of exchange to which the corporation is a party as the corporation whose shares are to be acquired;

(d) any amendment of the articles of incorporation which affects the rights appurtenant to the shares of the dissenting shareholder materially and adversely in that it:

(i) alters or abolishes a preferential right of such shares;

(ii) creates, alters, or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(iii) alters or abolishes a preemptive right of the holder of such shares to acquire shares or other securities;

(iv) excludes or limits the right of the holder of such shares to vote on any matter or to cumulate his votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting

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rights; or

(c) any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws, or a resolution of the board of directors directs that dissenting shareholders have a right to obtain payment for their shares.

(2) (a) A ~~shareholder may dissent~~ record holder of shares may assert dissenters' rights as to less than all of the shares registered in his name only if he dissents with respect to all the shares beneficially owned by any one person and discloses the names and addresses of the persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his behalf and shall be treated as a dissenting shareholder under the terms of this section and 35-1-812 if he submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

(3) The ~~provisions of~~ right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if ~~such corporation is on~~

~~the date of the filing of the articles of merger the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger or if~~ a vote of the shareholders of such corporation is not necessary to authorize such merger.

(4) A shareholder of a corporation who has a right under this section to obtain payment for his shares has no right at law or in equity to attack the validity of the corporate action that gives rise to his right to obtain payment nor to have the action set aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation."

NEW SECTION. Section 49. Procedures for protection of dissenters' rights. (1) As used in this section:

(a) "Dissenter" means a shareholder or beneficial owner who is entitled to and does assert dissenters' rights under 35-1-810 and who has performed every act required up to the time involved for the assertion of such rights.

(b) "Corporation" means the issuer of the shares held by the dissenter before the corporate action, or the successor of that issuer by merger or consolidation.

(c) "Fair value" of shares means their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation

or depreciation in anticipation of such corporate action unless such exclusion would be inequitable.

(d) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at such rate as is fair and equitable under all the circumstances.

(2) If a proposed corporate action which would give rise to dissenters' rights under 35-1-810(1) is submitted to a vote at a meeting of shareholders, the notice of meeting shall notify all shareholders that they have or may have a right to dissent and obtain payment for their shares by complying with the terms of this section and shall be accompanied by a copy of 35-1-810 and this section.

(3) If the proposed corporate action is submitted to a vote at a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for his shares must file with the corporation, prior to the vote, a written notice of intention to demand that he be paid fair compensation for his shares if the proposed action is effectuated and shall refrain from voting his shares in approval of such action. A shareholder who fails in either respect acquires no right to payment for his shares under this section or 35-1-810.

(4) If the proposed corporate action is approved by

the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send a notice of the adoption of the plan of corporate action to all shareholders who are entitled to dissent and demand payment for their shares. The notice shall:

(a) state where and when a demand for payment must be sent and certificates of certificated shares must be deposited in order to obtain payment;

(b) inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received;

(c) supply a form for demanding payment, which includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares; and

(d) be accompanied by a copy of 35-1-810 and this section. The time set for the demand and deposit may not be less than 30 days from the mailing of the notice.

(5) A shareholder who fails to demand payment or fails (in the case of certificated shares) to deposit certificates

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as required by a notice pursuant to subsection (4) has no right under this section or 35-1-810 to receive payment for his shares. If the shares are not represented by certificates, the corporation may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action or the release of restrictions under the terms of subsection (6). The dissenter retains all other rights of a shareholder until those rights are modified by effectuation of the proposed corporate action.

(6) (a) Within 60 days after the date set for demanding payment and depositing certificates, if the corporation has not effectuated the proposed corporate action and remitted payment for shares pursuant to subsection (6)(c), it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.

(b) When uncertificated shares have been released from transfer restrictions and deposited certificates have been returned, the corporation may at any later time send a new notice conforming to the requirements of subsection (4), with like effect.

(c) Immediately upon effectuation of the proposed corporate action or upon receipt of demand for payment if

the corporate action has already been effectuated, the corporation shall remit to dissenters who have made demand and, if their shares are certificated, have deposited their certificates, the amount that the corporation estimates to be the fair value of the shares, with interest if any has accrued. The remittance shall be accompanied by:

(i) the corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the date of remittance, together with the latest available interim financial statement;

(ii) a statement of the corporation's estimate of fair value of the shares; and

(iii) a notice of the dissenter's right to demand supplemental payment.

(7) (a) If the corporation fails to remit as required by subsection (6) or if the dissenter believes that the amount remitted is less than the fair value of his shares or that the interest is not correctly determined, he may send the corporation his own estimate of the value of the shares or of the interest and demand payment of the deficiency.

(b) If the dissenter does not file such an estimate within 30 days after the corporation's mailing of its remittance, he shall be entitled to no more than the amount remitted.

(8) (a) Within 60 days after receiving a demand for

payment pursuant to subsection (7), if any such demands for payment remain unsettled, the corporation shall file in an appropriate court a petition requesting that the fair value of the shares and interest thereon be determined by the court.

(b) An appropriate court is the district court in the county of this state where the registered office of the corporation is located. If, in the case of a merger, consolidation, or exchange of shares, the corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the foreign corporation was last located.

(c) All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each such dissenter. If a dissenter is a nonresident, the copy may be served on him by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power as may be specified in the order of their appointment

or in any amendment thereof. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.

(e) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.

(f) If the corporation fails to file a petition as provided in subsection (8)(a), each dissenter who made a demand and who has not already settled his claim against the corporation shall be paid by the corporation the amount demanded by him, with interest, and may sue therefor in an appropriate court.

(9) (a) The costs and expenses of any proceeding under subsection (8), including the reasonable compensation and expenses of appraisers appointed by the court, shall be determined by the court and assessed against the corporation, except that any part of the costs and expenses shall be apportioned and assessed as the court may consider equitable against all or some of the dissenters who are parties and whose action in demanding supplemental payment the court finds to be arbitrary, vexatious, or not in good faith.

(b) Fees and expenses of counsel and of experts for the respective parties may be assessed as the court

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considers equitable against the corporation and in favor of any or all dissenters if the corporation failed to comply substantially with the requirements of this section. The fees and expenses shall be assessed against either the corporation or a dissenter in favor of any other party if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section and 35-1-810.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and should not be assessed against the corporation, it may award to these counsel reasonable fees, to be paid out of the amounts awarded to the dissenters who were benefited.

(10) (a) Notwithstanding the foregoing provisions of this section, the corporation may elect to withhold the remittance required by subsection (6) from any dissenter with respect to shares of which the dissenter, or the person on whose behalf the dissenter acts, was not the beneficial owner on the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. With respect to such shares, the corporation shall, upon effectuating the corporate action, state to each dissenter its estimate of the fair value of the shares,

state the rate of interest to be used, explaining the basis thereof, and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.

(b) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, he may, within 30 days after the date of mailing of the corporation's offer, mail the corporation his own estimate of fair value and interest and demand their payment. If the dissenter fails to do so, he is entitled to no more than the corporation's offer.

(c) If the dissenter makes a demand as provided in subsection (b), the provisions of subsections (8) and (9) apply to further proceedings on the dissenter's demand.

Section 50. Section 35-1-901, MCA, is amended to read:

"35-1-901. Voluntary dissolution by incorporators or initial board of directors -- filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time ~~within 2 years after the date of the issuance of its certificate of incorporation~~ in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators or initial board of directors and verified by them and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid;

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of dissolution to which he shall affix the other duplicate original.

(3) The certificate of dissolution, together with the

duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, the board of directors, or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease."

Section 51. Section 35-1-1002, MCA, is amended to read:

"35-1-1002. Activities not to be considered transacting business. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state for the purposes of this chapter by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to

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its securities;

(5) effecting sales through independent contractors;

(6) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(7) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property ~~if there is no activity conducted by the out-of-state borrower or lender with respect to the loan except periodic inspection of the security~~;

(8) securing or collecting debts or enforcing any rights in property securing the same;

(9) transacting any business in interstate commerce;

(10) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature."

Section 52. Section 35-1-1006, MCA, is amended to read:

"35-1-1006. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) shall contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words or such corporation shall, for use in this state,

add at the end of its name one of such words or an abbreviation thereof;

~~(1)~~(2) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

~~(2)~~(3) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision does not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(a) a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic corporation, to that of any foreign corporation authorized to transact business in this state, or to any name reserved or registered as provided in this chapter and which fictitious name is registered as an assumed business name under the provisions of 30-13-203;

(b) the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(c) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this state."

Section 53. Section 35-1-1007, MCA, is amended to read:

"35-1-1007. Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise complied with the provisions of this chapter."

Section 54. Section 35-1-1008, MCA, is amended to read:

"35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state,

which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

~~(b)~~(c) the date of incorporation and the period of duration of the corporation;

~~(c)~~(d) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

~~(d)~~(e) the address of the ~~proposed~~ registered office of the corporation in this state and the name of its ~~proposed~~ registered agent in this state at such address;

~~(e)~~(f) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

~~(f)~~(g) the names and respective addresses of the directors and officers of the corporation;

~~(g)~~(h) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes~~--par value of shares, shares without par value~~, and series, if any, within a class;

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~~(h)~~(ii) a statement of the aggregate number of issued shares, itemized by classes~~, par value of shares, shares without par value~~ and series, if any, within a class; and

~~(i) a statement expressed in dollars of the amount of stated capital of the corporation as defined in this chapter~~

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such application."

Section 55. Section 35-1-1009, MCA, is amended to read:

"35-1-1009. Filing of application -- issuance of certificate of authority. (1) Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly ~~certified by manual or~~

~~facsimile signature~~ authenticated by the proper officer of the state or country of incorporation.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(c) issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

(3) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative."

Section 56. Section 35-1-1015, MCA, is amended to read:

"35-1-1015. Filing required for amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment,

duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority."

Section 57. Section 35-1-1017, MCA, is amended to read:

"35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process

and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class, as of the date of such application;

(g) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class, as of the date of such application;

~~(f)~~(h) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to said application to the effect that the department is satisfied from the available evidence that all such taxes imposed have been paid. The issuance of such certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

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(i) such additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by such foreign corporation as prescribed by this chapter.

(2) The application for withdrawal shall be made ~~in--a form~~ on forms prescribed and furnished by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the application or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him."

Section 58. Section 35-1-1101, MCA, is amended to read:

"35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address, including street and

number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by ~~classes, par value of shares, shares without par value,~~ class and series, if any, within a each class; and

(f) a statement of the aggregate number of issued shares, itemized by ~~classes, par value of shares, shares without par value,~~ class and series, if any, within a each class;.

~~(g) a statement, expressed in dollars, of the amount of stated capital of the corporation as defined in this chapter.~~

(2) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state and a statement, expressed in

dollars, of the gross amount of business transacted by the corporation for the 12 months ended on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If on December 31 preceding the time herein provided for the filing of such report, the corporation had not been authorized to transact business in this state for a period of 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in this state and such December 31. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subsection need not be set forth in such report.

(3) Such annual report must be ~~in a form~~ on forms prescribed by the secretary of state. The information therein contained must be given as of the date of the execution of the report, except as to the information required by subsection (1)(g) which must be given as of the close of business on December 31 next preceding the date herein provided for the filing of such report. It must be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or

treasurer and verified by the officer executing the report, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation and verified by such receiver or trustee."

Section 59. Section 35-1-1202, MCA, is amended to read:

"35-1-1202. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $20;

(2) filing articles of amendment and issuing a certificate of amendment, $20;

(3) filing restated articles of incorporation and issuing a restated certificate of incorporation, $20;

(4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $20;

(5) filing an application to reserve a corporate name, $2;

(6) filing a notice of transfer of a reserved corporate name, $2;

(7) filing a statement of change of address of registered office or change of registered agent, or both, $2;

(8) filing a statement of the establishment of a

SB 475

series of shares, $5;

~~(9) filing a statement of cancellation of shares, $5~~

~~(10) filing a statement of reduction of stated capital, $5~~

~~(11)~~ (9) filing a statement of intent to dissolve, $2;

~~(12)~~ (10) filing a statement of revocation of voluntary dissolution proceedings, $2;

~~(13)~~ (11) filing articles of dissolution and issuing a certificate of dissolution, $5;

~~(14)~~ (12) filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, $20;

~~(15)~~ (13) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, $20;

~~(16)~~ (14) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, $10;

~~(17)~~ (15) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, $20;

~~(18)~~ (16) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal,

$5;

~~(19)~~ (17) filing an annual report, $5;

~~(20)~~ (18) filing any other statement or report, except an annual report, of a domestic or foreign corporation, $2."

Section 60. Section 35-1-1205, MCA, is amended to read:

"35-1-1205. License fees payable by foreign corporation. (1) The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state the sum of $50 as an initial license fee.

(2) Thereafter the secretary of state shall fix the license fee for each foreign corporation as follows:

(a) He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the preceding section if it had authorized shares ~~having a par value of $100 per share~~ in an amount equal to the ~~stated capital~~ number of authorized shares of the reporting foreign corporation shown by its filed annual report.

(b) Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business

transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report.

(c) From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

(3) The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license fee shall be paid by the corporation to the secretary of state within 30 days after the mailing of the notice. Failure to pay such additional license fee within said 30-day period shall render such corporation liable to the secretary of state for a penalty equal to 10% of the amount of the additional license fee, together with interest at the rate of 1/2 of 1% per month on the fee plus penalty until paid.

(4) Foreign corporations which entered Montana for the transaction of business prior to December 31, 1968, shall be

entitled to employ within this state an amount of ~~stated~~ capital equal to the greatest amount employed in the state during the period of their qualification prior to December 31, 1968, without the payment of additional fees."

Section 61. Codification instruction. Sections 4, 5, 23, 29, 38, 39, and 49 are intended to be codified as an integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to sections 4, 5, 23, 29, 38, 39, and 49.

Section 62. Repealer. Sections 35-1-608, 35-1-613 through 35-1-616, 35-1-701 through 35-1-705, 35-1-802, and 35-1-811, MCA, are repealed.

-End-

SB 475

MINUTES FOR MEETING
SENATE JUDICIARY COMMITTEE
February 18, 1981

The thirty-first meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 477:

ESTABLISHING INCENTIVES FOR JUVENILE CORRECTIONS PROGRAMS.

Senator Van Valkenburg, District 50, Missoula, presented the bill, saying that it had been introduced because there should be some dialogue about the benefits which might result to the state from having a community-based, rather than a state-based, corrections system -- particularly in the area of juvenile corrections. He explained that the bill was modeled after Oregon law. He admitted that the funding for this program would present a problem, but felt that the cost would be lower overall with local correction. He suggested that if this bill failed, the concept could be incorporated into an interim study.

Senator Anderson asked for a figure on the funding which would be required, and was told that a net expenditure by the state of fifty thousand dollars could be expected.

Opposing testimony was introduced (marked Exhibit A and attached to these minutes).

CONSIDERATION OF SENATE BILL 475:

ADOPTING OF REVISIONS TO THE MODEL BUSINESS CORPORATION ACTS RECOMMENDED BY ABA.

The bill was presented by Senator Mazurek, who said that it had been recommended by the Bar Association to the Corporation Act after a year's work.

Ward Shanahan, Chairman of the Business Section of the Bar Association, said that the bill had two basic purposes: the improvement of minority stockholders' rights, and the tightening up of the requirements on the board of directors of a corporation. This bill would require any corporation

to notify the stockholder when there is going to be a change which will affect his rights and to give him notice in advance of any exchange of shares which will involve him. Small, closely-held corporations would benefit most from this bill. Mr. Shanahan then started through the bill, outlining the changes which had been made, and the purpose for each one.

Chairman Anderson interrupted the presentation to suggest that this far-reaching bill be pursued at 7:30 tonight, when there would be more time to do it justice. Mr. Shanahan, Mr. Wyse (of the U. of M. Law School), Bob Pyfer, and Senator Mazurek all agreed to this plan. Senator Anderson asked if any opponents to the bill were present, and when it developed that none were, he set further hearing at 7:30 tonight.

CONSIDERATION OF SENATE BILL 478:

INCLUDING ABANDONED MINERAL INTERESTS AS PROPERTY DISPOSED OF UNDER THE UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

Senator Ochsner, District 26, presented the bill. He said that the main purpose is to try to clear up severed mineral rights scattered across the country that are as low, in some instances, as 1/100 interest. This clouding of the title prevents oil exploration and other development. He said that this bill was based on Louisiana, Arkansas, and Wyoming law.

James Mockler, representing the Montana Coal Council, spoke in opposition to the bill, stating that there is a market value to these mineral interests, and no provision in the bill would allow notice to be served on the owners of these mineral interests before terminating them.

Also speaking in opposition to the bill were Glenna Phillips, a representative of Phillips Trust, with both mineral and royalty interests reserved by her father when the property was sold; Karla Gray, representing Atlantic Richfield, who said that subsection (1) was totally unintelligible; Pat Wilson, representing Montco, who suggested committee members talk with Senator Keating on this issue; Mack Johnson, of Helena; Don Allen; Bill Hand, Executive Secretary to the Montana Mining Association; Bob Gannon, of Montana Power; and John Sullivan, whose written testimony is included with the testimony sheets attached to these minutes.

In closing, Senator Ochsner pointed out a conflict within the opponents to his bill -- when a bill to tax these mineral interests is introduced, they oppose it, claiming that such interests are of no value; but when these "valueless" interests are threatened by a bill such as this one, the owners claim they are being deprived of something of value.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date Feb. 18, 1981

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: WARD SHANAHAN DATE: 2-15-91

ADDRESS: 301 First Nat'l Bank Helena

PHONE: 442-8560

REPRESENTING WHOM? State Bar - Business Section

APPEARING ON WHICH PROPOSAL: SB 475

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Good Committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ronald C. Wyse DATE: Feb 12 1981

ADDRESS: 5785 Pinewood Missoula

PHONE: 251 2756

REPRESENTING WHOM? U. of Montana Law School

APPEARING ON WHICH PROPOSAL: SB 475

DO YOU: SUPPORT? yes AMEND? _____ OPPOSE? _____

COMMENTS:

I am a professor at the law school and was the principal draftsman of this bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: James D. Parker DATE: 2/18/81

ADDRESS: 2301 Colonial Dr

PHONE: 442-6223

REPRESENTING WHOM? Mt. Coal Council

APPEARING ON WHICH PROPOSAL: S.B. 478

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TO: Senator Mike Anderson, Chairman

FROM: David S. Niss, Counsel to the Committee

RE: Senate Bill 475 (Revision of Montana Business Corporation Act)

DATE: February 17, 1981

The Montana Business Corporation Act (Title 35, chapter 1, MCA) was enacted in 1967 to govern the formation, operation, merger, consolidation, and dissolution of domestic and foreign corporations within the state of Montana and with the exception of only a few of the many sections of the Act, has not been amended since its inception.

The provisions of the original 1967 act were taken largely from the provisions of the Model Business Corporation Act prepared by the American Bar Association, with certain changes having been made to conform to peculiarities of Montana law. Since the original Model Act was prepared by the Association, many sections of the Act have been revised by the Corporate Laws Committee of the ABA, which revisions reflect continuing practical experience with the effect of the original language. The purpose of Senate Bill 475 is to update the language of the Montana version of the Model Act, based upon recent revisions to the Model Act as well as the experience of Montana lawyers practicing corporate law.

Because of the length of SB 475, no attempt has been made to summarize its provisions in detail. Rather, included below are the comments and explanations for the proposed revisions as prepared by Professor Ron Wise of the University of Montana School of Law and other Montana practitioners.

Section 2.

COMMENT: Section 35-1-108 is unchanged from the present law and is verbatim from the current version of the Model Act, except as follows:

(1) Subsection (6) has been shortened to conform to the Model Act and to eliminate any confusion regarding the ability of a corporation to assist its employees. As noted in the comment to subsection 35-1-102 (10), an officer and a director can be an employee. See also section 35-1-215 regarding the loaning of money to employees and directors.

(2) Subsection (14) has been broadened to permit corporations to engage in any lawful business which the Board of Directors find shall aid government policy. The present statute limits this power to time of war -- unnecessaril so.

(3) Former subsection (15) on indemnifaction has been deleted, and a new section, 35-1-112 added.

(4) New subsection (17) expressly permits a corporation to be a partner, joint venturer, etc. This provision is section 4 (p) of the current version of the Model Act.

DATE February 18, 1981

COMMITTEE ON JUDICIARY

SB 468 SB 477 SJR 20
SB 238 SB 475
SB 479 SB 478

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppos
Pat Wilson	Montco	478		✓
MIKE McCABE	SELF	468	✓	
Mike Zimmerman	Self	475	✓	
Karla Gray	Atco	478		✓
Norman Williams	SELF	478		✓
William L. Romine	Mont. Land Title Assn	479	✓	
[illegible]	Mont. Coal Council	478		✓
[illegible]	MT. Home Ed. Assoc.			
Charles McCarthy	CYDB/SRS	477		
[illegible]	[illegible]			
[illegible]	[illegible]			
[illegible]	[illegible]			
Bill Hand	Mt. Mng Assn.	478		✓
Bob Gannon	Montana Power	478		✓
John Sullivan	MDU	478		✓
Jeremiah F. Johnson	Mont. Probation Officers	477		✓

(Please leave prepared statement with Secretary)

(3)

MINUTES FOR MEETING
SENATE JUDICIARY COMMITTEE
February 19, 1981

The thirty-second meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 475:

Senator Olson moved that the bill DO PASS AS AMENDED (as shown on the attached Committee Report), and his motion passed unanimously.

DISPOSITION OF SENATE BILL 287:

David Niss outlined some of the amending he felt necessary.

Senator Manley stated that he had not drafted the bill in order to protect the Highway Department, but to protect the land owners from being run over roughshod by the Highway Department. He said that rather than "fix" his bill too much, he would prefer to see it killed.

The first amendment shown on the attached Committee Report was passed with Senator Olson in opposition. The fourth amendment was passed with Senator Crippen in opposition.

Senator B. Brown moved that the bill DO PASS AS AMENDED, and his motion carried.

DISPOSITION OF SENATE BILL 468:

Senator Crippen moved that the bill DO PASS, and his motion passed with Senator Tveit in opposition.

DISPOSITION OF SENATE BILL 289:

Senator B. Brown moved the first amendment, which passed unanimously; then he moved the second amendment, which passed over the opposition of Senator Anderson. Senator B. Brown moved that the bill DO PASS AS AMENDED, and his motion passed with Senators Berg, Tveit, and Anderson opposing.

DISPOSITION OF SENATE BILL 477:

Senator O'Hara moved that the bill DO NOT PASS, and his motion

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 2/19/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

February 19, 19 81

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 475

Respectfully report as follows: That SENATE Bill No. 475

be amended as follows:

1. Page 13, line 14.
Following: "(a)"
Strike: "(1)"
Insert: "(i)"

2. Page 14, line 23.
Following: "(a)"
Insert: "(i)"

3. Page 14, line 24.
Following: "or"
Strike: (b)
Insert: "(a)(ii)"

4. Page 86, line 22.
Following: "of"
Strike: "35-1-804(3)
Insert: "35-1-813(5)

~~DO PASS~~

JRF

continued

Chairman.

STATE PUB. CO.
Helena, Mont.

5. Page 99, line 19.
Following: "and"
Strike: "35-1-812"
Insert: "[section 49]"

6. Page 112, line 25.
Following: "of"
Strike: "30-13-203"
Insert: "Title 30, chapter 13, part 2"

7. Page 113, line 19.
Following: "of"
Strike: "this chapter"
Insert: "35-1-1006"

8. Page 121, line 20 through line 23.
Following: "report"on line 20
Strike: line 20 through "report" on line 23.

JRG

And, as so amended,
DO PASS

Mike Anderson Chairman.

STATE PUB. CO.
Helena, Mont.

JUDICIARY COMMITTEE

37 Legislature

SENATE BILLS

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
475	Adopting of revisions to the model Business Corporations act recommended by ABA.	3/3/81	Mazurek	3/27/81	Do Pass As Amended 3/27/81	3/27/81
479	Validating certain conveyances of real property containing technical defects.	3/3/81	Crippen	3/26/81	Do Pass As Amended 3/27/81	3/27/81
33	Amending numerous sections consistent with the mandate to the code commissioner contained in 1-11-204.	3/2/81	Goodover	3/24/81	Do Pass As Amended 3/26/81	3/26/81
144	Creating the criminal offense of false claims to public agencies.	3/2/81	Hazelbaker	3/11/81	Do Pass as Amended 3/12/81	3/12/81
170	Amending 70-22-109 to remove the filing fee for filing the complete corner record under the Corner Recordation Act.	3/2/81	Towe	3/9/81	Do Pass 3/10/81	3/10/81
171	Amending 71-1-211 to prohibit the method of entering a release of a mortgage in the margin of the record.	3/2/81	Towe	3/9/81	Do Pass 3/10/81	3/10/81

SENATE BILL NO. 475

INTRODUCED BY MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109, 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THROUGH 35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406 THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509, 35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607, 35-1-610 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH 35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THROUGH 35-1-1009, 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205, MCA; AND REPEALING SECTIONS 35-1-608, 35-1-613 THROUGH 35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-1-102, MCA, is amended to read:

"35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this

There are no changes in SB475, and due to length will not be rerun. Please refer to yellow copy for complete text.

Approved by Committee
on Judiciary

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-1-102, MCA, is amended to read:

"35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

(6) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(7) "Shareholder" means one who is a holder of record of shares in a corporation and is synonymous with the term "stockholder". If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified

SECOND READING

person or persons. The resolution shall set forth the classification of a shareholder who may certify; the purpose or purposes for which the certification may be made; the form of certification and information to be contained therein; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the corporation; and such other provisions with respect to the procedure as are considered necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be considered, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

~~(9) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares.~~

~~(10) "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.~~

~~(11) "Stated capital" means, at any particular time:~~

~~(a) the sum of the par value of all shares of the corporation having a par value that have been issued;~~

~~(b) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and~~

~~(c) such amounts not included in subsections (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.~~

~~Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation for the purpose of computing fees, franchise taxes, and other charges imposed by this chapter.~~

~~(12) "Surplus" means the excess of the net assets of a corporation over its stated capital.~~

~~(13) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.~~

~~(14) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.~~

~~(15) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.~~

~~(16)~~(9) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute filing under this chapter.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

Section 2. Section 35-1-108, MCA, is amended to read:

"35-1-108. General powers. Each corporation shall have power to:

(1) have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain and defend, in its corporate name;

(3) have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its

property and assets;

(6) lend money ~~to, guarantee the obligations of, and otherwise~~ and use its credit to assist its employees and, ~~upon the affirmative vote of the holders of a majority of the outstanding shares of the corporation which are entitled to vote for directors, lend money to, guarantee the obligations of, and otherwise assist its directors and officers, but no loans shall be made by a corporation secured by its shares~~;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, associations, partnerships, joint ventures, cooperatives, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country;

(11) elect or appoint officers and agents of the corporation and define their duties and fix their compensation;

(12) make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and in time of war to make donations in aid of war activities;

(14) ~~in time of war~~, transact any lawful business in aid of ~~the United States in the prosecution of the war~~ governmental policy;

~~(15) indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of~~

~~another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation, and make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution adopted by the shareholders after notice;~~

~~(16)~~(15) pay pensions and retirement benefits and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

~~(17)~~(16) cease its corporate activities and surrender its corporate franchise;

(17) be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;

(18) have and exercise all powers necessary or convenient to effect any or all of the purposes for which

the corporation is organized."

Section 3. Section 35-1-109, MCA, is amended to read:

"35-1-109. Liability of and to ostensible corporations. ~~(1)~~ All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

~~(2) One who assumes an obligation to an ostensible corporation as such cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.~~"

NEW SECTION. Section 4. Indemnification of directors and officers. (1) As used in this section, the following definitions apply:

(a) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.

(b) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the

predecessor's existence ceased upon consummation of such transaction.

(c) "Expenses" include attorneys' fees.

(d) "Official capacity" means:

(i) when used with respect to a director, the office of director in the corporation; and

(ii) when used with respect to a person other than a director as contemplated in subsection (9), the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

(e) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(f) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative.

(2) (a) A corporation may indemnify any person made a party to any proceeding by reason of the fact that he is or was a director if:

(i) he conducted himself in good faith; and

(ii) he reasonably believed:

(A) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(B) in all other cases, that his conduct was at least not opposed to its best interests; and

(iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) Indemnification may be made against judgments, penalties, fines, settlements, and reasonable expenses, actually incurred by the person in connection with the proceeding. However, if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect to any proceeding in which the person shall have been adjudged to be liable to the corporation. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent may not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

(3) A director may not be indemnified under subsection (2) in respect to any proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he has been adjudged to be liable on the basis that personal benefit was improperly

received by him.

(4) (a) Unless limited by the articles of incorporation:

(i) a director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in subsection (2) shall be indemnified against reasonable expenses incurred by him in connection with the proceeding; and

(ii) a court of appropriate jurisdiction, upon application of a director and such notice as the court shall require, may order indemnification in the following circumstances:

(A) if it determines a director is entitled to reimbursement under subsection (4)(a)~~(i)~~(I), the court shall order indemnification, in which case the director shall be entitled to recover the expenses of securing such reimbursement; or

(B) if it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the standards of conduct set forth in subsection (2) or has been adjudged liable under subsection (3), the court may order such indemnification as the court considers proper, except that indemnification with respect to any proceeding by or in the right of the corporation or in which liability has been

adjudged pursuant to subsection (3) shall be limited to expenses.

(b) A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

(5) (a) No indemnification under subsection (2) may be made by the corporation unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standards of conduct set forth in subsection (2). Such determination shall be made:

(i) by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or

(ii) if such a quorum cannot be obtained, then by a majority vote of a committee of the board, duly designated to act in the matter by a majority vote of the full board, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding; or

(iii) by special legal counsel selected by the board of directors or a committee thereof by vote as set forth in (a)(I) or ~~(b)~~ (A)(II) of subsection (5) or, if the requisite quorum of the full board cannot be obtained and such

committee cannot be established, then by a majority vote of the full board, in which selection directors who are parties may participate; or

(iv) by the shareholders.

(b) Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in subsection (5)(a)(iii) for the selection of such counsel. Shares held by directors who are parties to the proceeding may not be voted on the subject matter under this subsection.

(6) Reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding upon receipt by the corporation of:

(a) a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation as authorized in this section; and

(b) a written undertaking by or on behalf of the director to repay such amount if it is ultimately determined

that he has not met such standard of conduct and after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The undertaking required by this subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make the repayment. Determinations and authorizations of payments under this subsection shall be made in the manner specified in subsection (5).

(7) No provision for the corporation to indemnify or to advance expenses to a director who is made a party to a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except as contemplated by subsection (10), is valid unless consistent with this section or, to the extent that indemnity hereunder is limited by the articles of incorporation, consistent therewith. Nothing contained in this section limits the corporation's ability to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(8) For purposes of this section, the corporation shall be considered to have requested a director to serve an employee benefit plan where the performance by him of his

duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be considered fines. Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be considered to be for a purpose that is not opposed to the best interests of the corporation.

(9) Unless otherwise limited by the articles of incorporation:

(a) an officer of the corporation shall be indemnified as and to the extent provided in subsection (4) for a director and shall be entitled to seek indemnification pursuant to the provisions of subsection (4) to the same extent as a director;

(b) a corporation has the power to indemnify and to advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to a director pursuant to this section; and

(c) a corporation, in addition, has the power to indemnify and to advance expenses to an officer, employee, or agent who is not a director to such further extent,

consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

(10) A corporation has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise or of an employee benefit plan, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(11) Any indemnification of or advance of expenses to a director in accordance with this section, if arising out of a proceeding by or in the right of the corporation, shall be reported in writing to the shareholders with the notice of the next shareholders' meeting or before.

NEW SECTION. Section 5. Loans to employees and directors. A corporation may not lend money to or use its credit to assist its directors without authorization in the particular case by its shareholders but may lend money to

and use its credit to assist any officer or employee of the corporation or of a subsidiary, including any such officer or employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

Section 6. Section 35-1-202, MCA, is amended to read:

"35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized, which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter;

(d) the aggregate number of shares which the corporation shall have authority to issue~~--if--such--shares are--to--consist-of-one-class-only,-the-par-value-of-each-of such-shares-or-a-statement--that--all--of--such--shares--are without--par--value-or~~ and, if such shares are to be divided into classes, the number of shares of each class ~~and--a statement--of-the-par-value-of-the-shares-of-each-such-class or-that-such-shares-are-to-be-without-par-value~~;

(e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of

the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series ~~insofar~~ as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional ~~or treasury~~ shares of the corporation;

~~(h)--any-provision,-not-inconsistent--with--law,--which the--incorporators--elect--to--set--forth-in-the-articles-of incorporation-for-the-regulation-of-the-internal-affairs--of the--corporation,--including--any--provision-restricting-the transfer-of--shares--and--any--provision--which--under--this chapter--is--required--or--permitted--to-be-set-forth-in-the bylaws~~

~~(i)~~(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

~~(j)~~(i) the number of directors constituting the initial board of directors and the names and addresses of

the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

~~(k)~~(i) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) the direction of the management of the business and the regulation of the affairs of the corporation;

(b) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(c) the par value of any authorized shares or class of shares;

(d) any provision that, under this chapter, is required or permitted to be set forth in the bylaws.

~~(2)~~(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter."

Section 7. Section 35-1-206, MCA, is amended to read:

"35-1-206. Power to amend articles of incorporation. (1) A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired so long as its articles of incorporation as amended

contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment and if a change in shares or the rights of shareholders or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

(2) In particular and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as to:

(a) change its corporate name;

(b) change its period of duration;

(c) change, enlarge, or diminish its corporate purposes;

(d) increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;

(e) ~~increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued~~ provide, change, or eliminate any provision with respect to the par value of any shares or class of shares;

(f) exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;

(g) change the designation of all or any part of its

shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;

~~(h) change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;~~

~~(i)~~(h) change the shares of any class, whether issued or unissued ~~and whether with or without par value~~, into a different number of shares of the same class or into the same or a different number of shares, ~~either with or without par value~~, of other classes;

~~(j)~~(i) create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;

~~(k)~~(j) cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;

~~(l)~~(k) divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares

of such series;

~~(m)~~(l) authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

~~(n)~~(m) authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

~~(o)~~(n) revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

~~(p)~~(o) grant to shareholders of any class the preemptive right to acquire additional ~~or treasury~~ shares of the corporation, whether then or thereafter authorized."

Section 8. Section 35-1-207, MCA, is amended to read:

"35-1-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) ~~The~~ If shares have been issued, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of or stock dividend in the corporation's own shares or solely to do so and to change the number of authorized shares in proportion thereto may be adopted by the board of directors and the provisions for adoption by shareholders do not apply, unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation that contain a statement that, except for the designated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation, together with the designated amendment, supersede the original articles of incorporation and all amendments thereto.

(b) Written notice setting forth the proposed

amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting. ~~If the amendment shall involve an increase of authorized shares, at least 30 days' notice of the meeting for acting upon such amendment shall be given to shareholders entitled to vote at such meeting.~~

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting."

Section 9. Section 35-1-208, MCA, is amended to read:

"35-1-208. Class voting on amendments. The holders of the outstanding shares of a class shall be entitled to vote

as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of such class;

~~(2) increase or decrease the par value of the shares of such class;~~

~~(3)~~(2) effect an exchange, reclassification, or cancellation of all or part of the shares of such class;

~~(4)~~(3) effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of such class;

~~(5)~~(4) change the designations, preferences, limitations, or relative rights of the shares of such class~~;~~. If any proposed amendment would change the designations, preferences, or relative rights of the shares of any series of such class but would not affect all of the shares of such class, then only the shares of the series so affected by the amendment may be considered a separate class for the purpose of this section.

~~(6)~~(5) change the shares of such class, ~~whether with or without par value,~~ into the same or a different number of shares, ~~either with or without par value,~~ of the same class or another class or classes;

~~(7)~~(6) create a new class of shares having rights and

preferences prior and superior to the shares of such class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of such class;

~~(8)~~(7) in the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;

~~(9)~~(8) limit or deny existing preemptive rights of the shares of such class;

~~(10)~~(9) cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared."

Section 10. Section 35-1-209, MCA, is amended to read:

"35-1-209. Articles of amendment -- contents. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such articles and shall set forth:

(1) the name of the corporation;

(2) the ~~amendment~~ amendments so adopted;

(3) the date of the adoption of the amendment by the shareholders or the board of directors when no shares have

been issued;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively; or, if no shares have been issued, a statement to that effect;

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected~~]~~.

~~[7) if such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.~~"

Section 11. Section 35-1-211, MCA, is amended to read:

"35-1-211. Effect of certificate of amendment. (1) ~~Upon~~ An amendment becomes effective upon the issuance of the

certificate of amendment by the secretary of state, ~~the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly~~ or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as shall be provided for in the articles of amendment.

(2) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than shareholders. In the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason."

Section 12. Section 35-1-212, MCA, is amended to read:

"35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain

only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to

all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(ii) file one of such duplicate originals in his

office;

(iii) issue a certificate of amendment to which he shall affix the other duplicate original.

(c) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(4) ~~Upon~~ The amendment becomes effective upon the issuance of the certificate of amendment by the secretary of ~~state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly~~ or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as may be provided for in the articles of amendment, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation."

Section 13. Section 35-1-213, MCA, is amended to read:

"35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly

adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide

for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected~~;~~.

~~(f) if the restated articles of incorporation effect a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement expressed in dollars of the amount of stated capital as changed by the restated articles of incorporation.~~"

Section 14. Section 35-1-214, MCA, is amended to read:

"35-1-214. Bylaws -- power in directors -- contents. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation."

Section 15. Section 35-1-301, MCA, is amended to read:

"35-1-301. Corporate name. (1) The corporate name:

(a) shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain an

abbreviation of one of such words;

~~(1)~~(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

~~(2)~~(c) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision does not apply if the applicant files with the secretary of state either of the following:

(i) the written consent of such other corporation or holder of a reserved or registered name to use the name or a deceptively similar name with one or more words added to make such name distinguishable from such other name; or

(ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged or that is formed by the reorganization or consolidation of one or more domestic or

foreign corporations or upon a sale, lease, or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of or is authorized to transact business in this state."

Section 16. Section 35-1-401, MCA, is amended to read:

"35-1-401. Board of directors. (1) ~~The~~ All corporate powers shall be exercised by or under authority of and the business and affairs of a corporation shall be managed by under the direction of a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

(2) A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

(3) (a) In performing his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(ii) counsel, public accountants, or other persons as to matters that the director reasonably believes to be within such person's professional or expert competence; or

(iii) a committee of the board upon which he does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(b) A director may not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

(c) A person who so performs his duties has no liability by reason of being or having been a director of the corporation.

(4) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken is presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to such action with the secretary of the meeting before the adjournment thereof or forwards the dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action."

Section 17. Section 35-1-402, MCA, is amended to read:

"35-1-402. Number, election, and term of directors. (1) The ~~number~~ board of directors of a corporation shall be ~~not less than three~~ consist of one or more members. ~~Subject to such limitation, the~~ The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of

incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified."

Section 18. Section 35-1-404, MCA, is amended to read:

"35-1-404. Place and notice of directors' meetings. (1) Meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated thereby shall

be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors or any committee designated thereby need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

(3) Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means constitutes presence in person at a meeting."

Section 19. Section 35-1-406, MCA, is amended to read:

"35-1-406. Action by directors without a meeting. (1) ~~Any~~ Unless otherwise provided by the articles of incorporation or bylaws, any action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the

directors or of a committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors or all of the members of the committee, as the case may be, entitled to vote ~~with respect to~~ on the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote and may be stated in any articles or document filed with the secretary of state under this chapter."

Section 20. Section 35-1-407, MCA, is amended to read:

"35-1-407. Executive and other committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors.

~~(2) No~~ except that no such committee shall have the authority ~~of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange, or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its~~

~~business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation,~~ to:

(a) authorize distributions;

(b) approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders;

(c) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof;

(d) amend the bylaws;

(e) approve a plan of merger not requiring shareholder approval;

(f) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or

(g) authorize or approve the issuance or sale of or any contract to issue or sell shares or designate the terms of a series of a class of shares, except that the board of directors, having acted regarding general authorization for the issuance or sale of shares or any contract therefor and, in the case of a series, the designation thereof may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or

other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including without limitation the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the secretary of state under this chapter.

~~(3)~~(2) The designation of any such committee, and the delegation thereto of authority, or the action by such committee pursuant to such authority ~~shall not operate to relieve the board of directors or any member thereof of any responsibility imposed by law~~ does not alone constitute compliance by any member of the board of directors not a member of the committee in question with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances."

Section 21. Section 35-1-408, MCA, is amended to read:

"35-1-408. Vacancies and removal of directors. (1) Any vacancy occurring in the board of directors may be filled by

the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

(2) At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. ~~The~~ Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds of the shares then entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the corporation has fewer than 100 shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

(3) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then

cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which he is a part."

Section 22. Section 35-1-409, MCA, is amended to read:

"35-1-409. Liability of directors in certain cases. (1) In addition to any other liabilities, ~~imposed by law upon directors of a corporation~~:

~~(a) Directors of a corporation~~ a director who vote votes for or assent assents to the ~~declaration of any dividend or other~~ any distribution of ~~the assets of a corporation to its shareholders~~ contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall, unless he complies with the standard provided in this chapter for the performance of the duties of directors, be ~~jointly and severally~~ liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount ~~of such dividend which is paid~~ or the value of such ~~assets which are distributed~~ distribution in excess of the amount of such ~~dividend or~~ distribution which could have been ~~paid or distributed under~~ without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

~~(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions~~

~~of this chapter shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this chapter.~~

~~(c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of or making adequate provision for all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed to the extent that such debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.~~

~~(d) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation or the making of any loan secured by shares of the corporation, except as authorized by other provisions of this chapter, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.~~

~~(2) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented~~

~~to--the--action-taken-unless-his-dissent-shall-be-entered-in the-minutes-of-the-meeting--or--unless--he--shall--file--his written-dissent-to-such-action-with-the-person-acting-as-the secretary--of--the-meeting-before-the-adjournment-thereof-or shall-forward-such-dissent-by-certified-or--registered--mail to--the--secretary--of-the-corporation-immediately-after-the adjournment-of-the-meeting.-Such-right-to-dissent-shall--not apply-to-a-director-who-voted-in-favor-of-such-action.~~

~~(3)--A--director--shall-not-be-liable-under-subsections (1)(a),-(1)(b),-or-(1)(c)-of-this-section-if-he--relied--and acted--in--good--faith--upon--financial--statements--of--the corporation--represented--to--him--to--be--correct--by---the president--or--the-officer-of-such-corporation-having-charge of-its-books-of-account-or-stated-in-a-written-report-by--an independent-public-or-certified-public-accountant-or-firm-of such--accountants--fairly-to-reflect-the-financial-condition of-such-corporation,-nor-shall-he-be-so-liable--if--in--good faith--in--determining--the--amount--available--for-any-such dividend-or-distribution-he-considered-the-assets-to--be--of their-book-value.~~

~~(4)~~(2) Any director against whom a claim shall be asserted under or pursuant to this section for the ~~payment~~ making of a ~~dividend-or-other~~ distribution ~~of-assets-of-a~~ corporation and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted

or received any such ~~dividend--or--assets~~ distribution, knowing such ~~dividend-or~~ distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

~~(5)~~(3) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the any other directors who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in this chapter for the performance of the duties of a director."

NEW SECTION. Section 23. Director -- conflicts of interest. (1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested is either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purposes if:

(a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose

without counting the votes or consents of such interested directors;

(b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent, in which vote or consent such interested directors may participate to the extent that they are also shareholders; or

(c) the contract or transaction is fair and reasonable to the corporation.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

Section 24. Section 35-1-501, MCA, is amended to read:

"35-1-501. Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(2) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. If the annual meeting is not held within any 18-month period, the district court with jurisdiction for the location of the corporation's registered office or principal place of

business may, on application of any shareholder, summarily order a meeting to be held. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than ~~one-half~~ one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws."

Section 25. Section 35-1-506, MCA, is amended to read:

"35-1-506. Voting of shares -- proxies. (1) Each outstanding share, regardless of class, shall be entitled to one vote, and each fractional share shall be entitled to a corresponding fractional vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this chapter.

(2) Neither ~~treasury shares nor~~ shares of its own stock held by the corporation in a fiduciary capacity nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation shall be voted at any meeting or counted in determining the total

number of outstanding shares at any given time.

(3) (a) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact.

(b) No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy. Every proxy is revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

(c) The authority of the holder of a proxy to act may not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

(d) Except when another provision has been made by written agreement between the parties, the record holder of shares, which he holds as pledgee or otherwise as security or which belong to another, shall issue a proxy to vote or take other action thereon to the pledgor or to such owner of such shares, upon demand therefor and payment of necessary expenses thereof.

(e) A shareholder may not sell his vote or issue a proxy to vote to any person for any sum of money or anything

of value, except as authorized in this section and 35-1-508.

(f) A proxy that is entitled "irrevocable proxy" and that states that it is irrevocable is irrevocable when it is held by any of the following or a nominee of any of the following:

(i) a pledgee;

(ii) a person who has purchased or agreed to purchase the shares;

(iii) a creditor or creditors of the corporation who extend or continue credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit;

(iv) a person who has contracted to perform services as an officer of the corporation, if:

(A) a proxy is required by the contract of employment; and

(B) the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for; or

(v) a person designated by or under an agreement under 35-1-508(3).

(g) Notwithstanding a provision in a proxy stating

that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, the debt of the corporation is paid, the period of employment provided for in the contract of employment has terminated, or the agreement under 35-1-508(3) has terminated; and in a case provided for in (iii) or (iv) of subsection (3)(f), it becomes revocable 5 years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This subsection does not affect the duration of a revocable proxy under subsection (3)(b).

(h) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the certificate representing such shares.

(4) At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal or by distributing such votes on the same

principle among any number of such candidates.

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe or, in the absence of such provision, as the board of directors of such corporation may determine.

(6) Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name.

(7) Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(8) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(9) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(10) On and after the date on which written notice of

redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares."

Section 26. Section 35-1-508, MCA, is amended to read:

"35-1-508. Voting ~~trust------inspection--of--agreement~~ trusts and agreements among shareholders. (1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares for which the voting trust certificates held by each are issued, and such trustee or trustees shall deposit a copy of such record with the

corporation at its registered office.

(2) The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of ~~a--beneficial interest in the~~ record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(3) Agreements among shareholders regarding the voting of their shares are valid and enforceable in accordance with the terms of the agreements. Such agreements are not subject to the provisions of this section regarding voting trusts."

Section 27. Section 35-1-509, MCA, is amended to read:

"35-1-509. Action by shareholders without a meeting. (1) Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the secretary of state under this chapter."

Section 28. Section 35-1-511, MCA, is amended to read:

"35-1-511. Shareholders' preemptive rights. The shareholders of a corporation shall have no preemptive right to acquire unissued ~~or treasury~~ shares of the corporation or obligations of the corporation convertible into such shares, except to the extent, if any, that such right is provided in the articles of incorporation."

NEW SECTION. Section 29. Control of directors by shareholders. (1) A provision in the articles of incorporation otherwise prohibited by law because it improperly restricts the board of directors in its management of the business of the corporation or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them all or any part of such management otherwise within the authority of the board under this chapter shall nevertheless be valid:

(a) if all the incorporators or holders of record of all outstanding shares, whether or not having voting power, have authorized such provision in the articles of incorporation or an amendment thereof; and

(b) if, subsequent to the adoption of such provision,

shares are transferred or issued only to persons who had knowledge or notice thereof or consented in writing to such provision.

(2) A provision authorized by subsection (1) is valid only if no shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

(3) Except as provided in subsection (4), an amendment to strike out a provision authorized by subsection (1) shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or by the holders of such greater proportion of shares as may be required by the articles of incorporation for that purpose.

(4) Alternatively, if a provision authorized by subsection (1) has ceased to be valid under this section, the board may authorize articles of amendment under 35-1-209, eliminating the provision. Such articles shall set forth the event by reason of which the provision ceased to be valid.

(5) The effect of any provision authorized by subsection (1) is to relieve the directors and impose upon the shareholders authorizing the provision or consenting thereto the liability for managerial acts or omissions that

is imposed on directors by this chapter to the extent that and so long as the discretion or powers of the board in its management of corporate affairs is controlled by any such provision.

(6) If the articles of incorporation of any corporation contain a provision authorized by subsection (1), the existence of the provision must be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

Section 30. Section 35-1-601, MCA, is amended to read:

"35-1-601. Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes~~, any or all of which classes may consist of shares with par value or shares without par value~~ with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter or the ~~constitution~~ Constitution of the State of Montana.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special

classes:

(a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(b) entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) having preference over any other class or classes of shares as to the payment of dividends;

(d) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(e) convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation~~, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is at the time of conversion at least equal to the aggregate par value of the shares into which the shares without par value are to be converted~~.

(3) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on such terms and conditions as may be

provided by resolutions of the board of directors."

Section 31. Section 35-1-602, MCA, is amended to read:

"35-1-602. Issuance of shares of preferred or special classes in series -- filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted;

(f) voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the

relative rights and preferences thereof;

(c) the date of adoption of such resolution;

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) return the other duplicate original to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation."

Section 32. Section 35-1-605, MCA, is amended to read:

"35-1-605. ~~Consideration--for~~ Issuance of shares. ~~(1)~~

~~Shares--having--a--par--value--may--be---issued---for---such consideration--expressed--in--dollars,-not-less-than-the-par value-thereof,-as-shall-be-fixed-from-time-to--time--by--the board--of--directors.~~ Subject to any restrictions in the articles of incorporation:

~~(2)~~(1) ~~Shares-without-par-value~~ shares may be issued for such consideration ~~expressed-in-dollars-as-may-be-fixed from-time-to-time-by--the--board--of--directors--unless--the articles--of--incorporation--reserve-to-the-shareholders-the right-to-fix-the-consideration.-In-the-event-that-such-right be-reserved-as-to-any-shares,-the-shareholders-shall,--prior to--the-issuance-of-such-shares,-fix-the-consideration-to-be received-for-such-shares-by-a--vote--of--the--holders--of--a majority--of--all-shares-entitled-to-vote-thereon.~~ as may be authorized by the board of directors establishing a price in money or other consideration, a minimum price, general formula, or method by which the price will be determined; and

(2) upon authorization by the board of directors, the corporation may issue its own shares in exchange for or in conversion of its outstanding shares or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series to effectuate stock dividends or splits, and any such transaction does not require consideration provided that no such issuance of shares of

any class or series may be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation or is authorized by an affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which the distribution is to be made.

~~(3)--Treasury--shares--may--be--disposed--of---by---the corporation--for--such-consideration-expressed-in-dollars-as may-be-fixed-from-time-to-time-by-the-board-of-directors.~~

~~(4)--That-part-of-the-surplus-of-a-corporation-which-is transferred-to-stated-capital-upon-the-issuance-of-shares-as a-share-dividend-shall-be-deemed-to-be-the-consideration-for the-issuance-of-such-shares.~~

~~(5)--In-the-event-of-a-conversion-of-shares-or--in--the event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par value,--whether-of-the-same-or-a-different-class-or-classes, the-consideration-for-the-shares-so-issued--in--exchange--or conversion-shall-be-deemed-to-be:~~

~~(a)--the--stated-capital-then-represented-by-the-shares so-exchanged-or-converted;~~

~~(b)--that-part--of--surplus,--if--any,--transferred--to stated-capital-upon-the-issuance-of-shares-for-the-shares-so exchanged-or-converted;-and~~

~~(c)--any---additional---consideration---paid---to---the corporation-upon-the-issuance-of-shares-for--the--shares--so exchanged-or-converted.~~"

Section 33. Section 35-1-606, MCA, is amended to read:

"35-1-606. Modes of payment for shares. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, subject to the provisions of 35-1-604, such shares shall be ~~deemed-to-be-fully-paid-and~~ nonassessable.

(2) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive."

Section 34. Section 35-1-607, MCA, is amended to read:

"35-1-607. Stock rights and options. (1) Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options

entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option.

(2) If such rights or options are to be issued to directors, officers, or employees as such of the corporation or of any subsidiary thereof and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan theretofore approved by such a vote of shareholders ~~and set forth or incorporated by reference in the instrument evidencing each such right or option.~~

(3) In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. ~~The price or prices to be received for any shares having a par value other than treasury shares to be issued upon the exercise of such rights or options shall not be less than the par value thereof.~~"

Section 35. Section 35-1-610, MCA, is amended to read:

"35-1-610. ~~Certificates representing shares~~ Shares represented by certificates and uncertificated shares. (1) The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or vice-chairman of the board of directors or the president or a vice-president and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. ~~The~~ Any or all of the signatures ~~of the president or vice-president and the secretary or assistant secretary~~ upon a certificate may be ~~facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or an employee of the corporation~~ facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate or shall state that the corporation will furnish

to any shareholder, upon request and without charge, a full statement of:

(a) the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued; and

(b) if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Each certificate representing shares shall state upon the face thereof:

(a) that the corporation is organized under the laws of this state;

(b) the name of the person to whom issued;

(c) the number and class of shares and the designation of the series, if any, which such certificate represents; ~~and~~

~~(d) the par value of each share represented by such certificate or a statement that the shares are without par value.~~

(4) No certificate shall be issued for any share until ~~such share is fully paid~~ the consideration established for its issuance has been paid.

(5) Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to subsections (2) and (3). Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series must be identical."

Section 36. Section 35-1-611, MCA, is amended to read:

"35-1-611. Issuance of fractional shares or scrip. A corporation may ~~but shall not be obliged to~~:

(1) issue ~~a certificate for a fractional~~ fractions of a share, either represented by a certificate or uncertificated;

(2) arrange for the disposition of fractional interests by those entitled thereto;

(3) pay in money the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) ~~and--by-action-of-its-board-of-directors-may~~ issue ~~in-lieu-thereof~~ scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share or an uncertificated full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or subject to any other conditions which the board of directors may deem advisable."

Section 37. Section 35-1-612, MCA, is amended to read:

"35-1-612. ~~Right~~ Power of corporation to acquire ~~and dispose-of~~ its own shares ~~---restrictions~~. (1) A corporation

shall have the ~~right~~ power to ~~purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of~~ its own shares~~,~~ ~~but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor and, if the articles of incorporation so permit or with the affirmative vote of the holders of at least two-thirds of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor~~. All of its own shares acquired by a corporation, upon acquisition, constitute authorized but unissued shares unless the articles of incorporation provide that they may not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.

(2) ~~To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares, the restriction shall be removed pro tanto~~. If the number of authorized shares is reduced by an acquisition, the corporation shall, no later than the time it files its next annual report under this chapter with the secretary of state, file a statement of cancellation showing the reduction in the authorized shares. The statement of

cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall set forth:

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

~~(3)--Notwithstanding---the---foregoing---limitation,--a corporation-may-purchase-or-otherwise-acquire-its-own-shares for-the-purpose-of:~~

~~(a)--eliminating-fractional-shares;~~

~~(b)--collecting-or--compromising--indebtedness--to--the corporation;~~

~~(c)--paying-dissenting-shareholders-entitled-to-payment for-their-shares-under-the-provisions-of-this-chapter;~~

~~(d)--effecting,-subject-to-the-other-provisions-of-this chapter,---the---retirement--of--its--redeemable--shares--by redemption-or-by-purchase-at-not-to--exceed--the--redemption price.~~

(3) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall,

when all fees and franchise taxes have been paid as prescribed in this chapter:

(a) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) return the other duplicate original to the corporation or its representative.

~~(4)--No-purchase-of-or-payment-for-its-own-shares-shall be--made-at-a-time-when-the-corporation-is-insolvent-or-when such-purchase-or-payment-would-make-it-insolvent.~~"

NEW SECTION. Section 38. Restriction on transfer of shares. (1) A written restriction on the transfer or registration of transfer of shares of a corporation, if permitted by this section and noted conspicuously on the certificate representing such shares, may be enforced against the holder of the restricted shares or any successor or transferee of the holder, including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(2) A restriction on the transfer or registration of transfer of shares of a corporation may be imposed by the articles of incorporation, the bylaws, or an agreement among any number of shareholders or among such holders and the corporation. No restriction so imposed is binding with respect to shares issued prior to the adoption of the restriction unless the holders of the shares are parties to an agreement or voted in favor of the restriction.

(3) A restriction on the transfer of shares of a corporation is permitted by this section if it:

(a) obligates the holder of the restricted shares to offer to the corporation, to any other holders of shares of the corporation, to any other person, or to any combination of the foregoing a prior opportunity, to be exercised within a reasonable time, to acquire the restricted shares;

(b) obligates the corporation, any holder of shares of the corporation, any other person, or any combination of the foregoing to purchase the shares which are the subject of an agreement respecting the purchase and sale of the restricted shares;

(c) requires the corporation or the holder of any class of shares of the corporation to consent to any proposed transfer of the restricted shares or to approve the proposed transferee of the restricted shares; or

(d) prohibits the transfer of the restricted shares to

designated persons or classes of persons, and the designation is not manifestly unreasonable.

(4) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under subchapter S of the United States Internal Revenue Code (26 U.S.C.A. 1371, et seq.) is conclusively presumed to be for a reasonable purpose.

(5) Any other lawful restriction on transfer or registration of transfer of shares is permitted by this section.

(6) Except as otherwise provided in this section, the transfer of shares and the certificates representing such shares are governed by Title 30, chapter 8.

NEW SECTION. Section 39. Distributions to shareholders. (1) Subject to any restrictions in the articles of incorporation, the board of directors may authorize and the corporation may make distributions, except that no distribution may be made if, after giving effect thereto, either:

(a) the corporation would be unable to pay its debts as they become due in the usual course of its business; or

(b) the corporation's total assets would be less than the sum of its total liabilities and, unless the articles of incorporation permit otherwise, the maximum amount that then

would be payable in any liquidation in respect of all outstanding shares having preferential rights in liquidation.

(2) Determinations under subsection (1)(b) may be based upon:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(3) In the case of a purchase, redemption, or other acquisition of a corporation's shares, the effect of a distribution must be measured as of the date money or other property is transferred or debt is incurred by the corporation or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, whichever is earlier. In all other cases, the effect of a distribution shall be measured as of the date of its authorization if payment occurs within 120 days after the authorization date or as of the date of payment if payment occurs more than 120 days after the authorization date.

(4) Indebtedness of a corporation incurred or issued to a shareholder in a distribution in accordance with this section must be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the

extent subordinated by agreement.

Section 40. Section 35-1-801, MCA, is amended to read:

"35-1-801. Procedure for merger, consolidation, and share exchange. (1) (a) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

~~(2)~~ (b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

~~(a)~~ (i) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

~~(b)~~ (ii) the terms and conditions of the proposed merger;

~~(c)~~ (iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving corporation or any other corporation or, in whole or in part, into cash or other property;

~~(d)~~ (iv) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

~~(e)~~ (v) such other provisions with respect to the

proposed merger as are deemed necessary or desirable.

(2) (a) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each board, approve a plan of consolidation setting forth:

(i) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(ii) the terms and conditions of the proposed consolidation;

(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or any other corporation or, in whole or in part, into cash or other property;

(iv) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; and

(v) such other provisions with respect to the proposed consolidation as are considered necessary or desirable.

(3) (a) All the issued or all the outstanding shares

of one or more classes of any domestic corporation may be acquired through the exchange of all shares of such class or classes by another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of exchange setting forth:

(i) the name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation;

(ii) the terms and conditions of the proposed exchange;

(iii) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or, in whole or in part, for cash or other property; and

(iv) such other provisions with respect to the proposed exchange as are considered necessary or desirable.

(c) The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation, through a voluntary exchange or otherwise, by agreement with the shareholders."

Section 41. Section 35-1-803, MCA, is amended to read:

"35-1-803. Approval of shareholders required. (1) The board of directors of each corporation, in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange, upon approving such plan of merger, or plan of consolidation, or exchange, shall by resolution direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger, or consolidation, or exchange. A copy or a summary of the plan of merger, ~~or plan of~~ consolidation, or exchange, as the case may be, shall be included in or enclosed with ~~such~~ notice.

~~(3)~~ At each such meeting a vote of the shareholders shall be taken on the proposed plan ~~of merger or consolidation~~. The plan ~~of merger or consolidation~~ shall be approved upon receiving the affirmative vote of the holders

of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan ~~of merger or consolidation~~ shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan ~~of merger or consolidation, as the case may be,~~ contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class or, in the case of an exchange, if the class is included in the exchange.

(4) After ~~such~~ the approval by a vote of the shareholders of each ~~corporation~~ of these corporations and at any time prior to the filing of the articles of merger, or consolidation, or exchange, the merger, or consolidation, or exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan ~~of merger or consolidation~~.

(5) (a) Notwithstanding the provisions of subsections (1) through (3), submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not

required if:

(i) the articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger;

(ii) each holder of shares of the surviving corporation that were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after;

(iii) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of voting shares outstanding immediately before the merger; and

(iv) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of participating shares outstanding immediately before the merger.

(b) As used in subsection (5)(a):

(i) "voting shares" means shares which entitle their holders to vote unconditionally in elections of directors;

(ii) "participating shares" means shares which entitle their holders to participate without limitation in distribution of earnings or surplus."

Section 42. Section 35-1-804, MCA, is amended to read:

"35-1-804. Articles of merger, ~~or~~ consolidation, or exchange -- contents -- filing. (1) Upon ~~such approval~~ receiving the approvals required by 35-1-801 and 35-1-803, articles of merger, ~~or~~ articles of consolidation, or exchange shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers of each corporation signing such articles and shall set forth:

(a) the plan of merger, ~~or the plan of~~ consolidation, or exchange;

(b) as to each corporation, either:

(i) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(ii) a statement that the vote of shareholders is not required by virtue of ~~35-1-804(5)~~ 35-1-803(5); and

(c) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against such plan, respectively, and, if the shares of any

class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) Duplicate originals of the articles of merger, ~~or articles of~~ consolidation, or exchange shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as prescribed in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of merger, ~~or a certificate of~~ consolidation, or exchange to which he shall affix the other duplicate original.

(3) The certificate of merger, ~~or certificate of~~ consolidation, or exchange, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving, or new, or acquiring corporation, as the case may be, or its representative."

Section 43. Section 35-1-805, MCA, is amended to read:

"35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the

outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation;

(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or ~~the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation~~ of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of its officers signing such articles and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of

the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) issue a certificate of merger to which he shall affix the other duplicate original.

(5) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative."

Section 44. Section 35-1-806, MCA, is amended to read:

"35-1-806. Effect of merger, or consolidation, or

exchange. (1) ~~Upon~~ A merger, consolidation, or exchange becomes effective upon the issuance of ~~the~~ a certificate of merger, ~~or the certificate of~~ consolidation, or exchange by the secretary of state, ~~the merger or consolidation shall be effected~~ or on a later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as provided for in the plan.

(2) When ~~such~~ a merger or consolidation has ~~been effected~~ become effective:

(a) ~~The~~ the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) ~~The~~ the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) ~~Such~~ the surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) ~~Such~~ the surviving or new corporation shall thereupon and thereafter possess all the rights, privileges,

immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed. The title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) ~~Such~~ the surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors ~~nor any liens upon the property of any such corporation shall be impaired~~ by such merger or consolidation.

(f) ~~In~~ in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its

articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

(3) When a merger, consolidation, or exchange has become effective, the shares of the corporation or corporations party to the plan that are to be converted or exchanged under the terms of the plan shall cease to exist, in the case of a merger or consolidation, or be considered to be exchanged, in the case of an exchange. The holders of such shares are thereafter entitled to only the shares, obligations, other securities, cash, or other property into which they have been converted or for which they have been exchanged in accordance with the plan and subject to any rights under 35-1-810."

Section 45. Section 35-1-807, MCA, is amended to read:

"35-1-807. Merger, or consolidation, or exchange of shares between ~~of~~ domestic and foreign corporations. ~~(1)~~ One or more foreign corporations and one or more domestic corporations may be merged, or consolidated, or participate in an exchange in the following manner if such merger, or consolidation, or exchange is permitted by the laws of the

state under which each such foreign corporation is organized:

~~(a)~~(1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger~~,~~ or consolidation, or exchange, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

~~(b)~~(2) If the surviving or new corporation~~,~~ ~~as the case may be,~~ in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

~~(i)~~(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

~~(ii)~~(b) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

~~(iii)~~(c) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

~~(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.~~

~~(3) At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.~~"

Section 46. Section 35-1-808, MCA, is amended to read:

"35-1-808. Sale of assets in regular course of business and mortgage or pledge of assets. The sale, lease, exchange, or other disposition of all or substantially all the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or

not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such case no authorization or consent of the shareholders shall be required."

Section 47. Section 35-1-809, MCA, is amended to read:

"35-1-809. Sale of assets not in regular course of business -- shareholder approval. A sale, lease, exchange, or other disposition of all or substantially all the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless in its discretion may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third

parties under any contracts relating thereto, without further action or approval by shareholders.

~~(5) The shareholders of a corporation may, by a vote of the holders of the number of shares required to change the articles of incorporation of such corporation at a meeting duly called upon not less than 30 days' notice, amend the articles of incorporation to give the board of directors general authority to sell, lease, exchange, or otherwise dispose of all or substantially all of the property and assets, with or without the good will, of a corporation upon such conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by the board of directors.~~"

Section 48. Section 35-1-810, MCA, is amended to read:

"35-1-810. Right of shareholders to dissent and obtain payment for shares. (1) Any shareholder of a corporation shall have the right to dissent from, and to obtain payment for his shares in the event of, any of the following corporate actions:

(a) any plan of merger or consolidation to which the corporation is a party, except as provided in subsection (3); or

(b) any sale or exchange of all or substantially all

of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within 1 year after the date of sale;

(c) any plan of exchange to which the corporation is a party as the corporation whose shares are to be acquired;

(d) any amendment of the articles of incorporation which affects the rights appurtenant to the shares of the dissenting shareholder materially and adversely in that it:

(i) alters or abolishes a preferential right of such shares;

(ii) creates, alters, or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(iii) alters or abolishes a preemptive right of the holder of such shares to acquire shares or other securities;

(iv) excludes or limits the right of the holder of such shares to vote on any matter or to cumulate his votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting

rights; or

(e) any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws, or a resolution of the board of directors directs that dissenting shareholders have a right to obtain payment for their shares.

(2) (a) A ~~shareholder may dissent~~ record holder of shares may assert dissenters' rights as to less than all of the shares registered in his name only if he dissents with respect to all the shares beneficially owned by any one person and discloses the names and addresses of the persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his behalf and shall be treated as a dissenting shareholder under the terms of this section and ~~35-1-812~~ [SECTION 49] if he submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

(3) The ~~provisions of~~ right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if ~~such corporation is on~~

~~the date of the filing of the articles of merger the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger or if~~ a vote of the shareholders of such corporation is not necessary to authorize such merger.

(4) A shareholder of a corporation who has a right under this section to obtain payment for his shares has no right at law or in equity to attack the validity of the corporate action that gives rise to his right to obtain payment nor to have the action set aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation."

NEW SECTION. Section 49. Procedures for protection of dissenters' rights. (1) As used in this section:

(a) "Dissenter" means a shareholder or beneficial owner who is entitled to and does assert dissenters' rights under 35-1-810 and who has performed every act required up to the time involved for the assertion of such rights.

(b) "Corporation" means the issuer of the shares held by the dissenter before the corporate action, or the successor of that issuer by merger or consolidation.

(c) "Fair value" of shares means their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation

or depreciation in anticipation of such corporate action unless such exclusion would be inequitable.

(d) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at such rate as is fair and equitable under all the circumstances.

(2) If a proposed corporate action which would give rise to dissenters' rights under 35-1-810(1) is submitted to a vote at a meeting of shareholders, the notice of meeting shall notify all shareholders that they have or may have a right to dissent and obtain payment for their shares by complying with the terms of this section and shall be accompanied by a copy of 35-1-810 and this section.

(3) If the proposed corporate action is submitted to a vote at a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for his shares must file with the corporation, prior to the vote, a written notice of intention to demand that he be paid fair compensation for his shares if the proposed action is effectuated and shall refrain from voting his shares in approval of such action. A shareholder who fails in either respect acquires no right to payment for his shares under this section or 35-1-810.

(4) If the proposed corporate action is approved by

the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send a notice of the adoption of the plan of corporate action to all shareholders who are entitled to dissent and demand payment for their shares. The notice shall:

(a) state where and when a demand for payment must be sent and certificates of certificated shares must be deposited in order to obtain payment;

(b) inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received;

(c) supply a form for demanding payment, which includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares; and

(d) be accompanied by a copy of 35-1-810 and this section. The time set for the demand and deposit may not be less than 30 days from the mailing of the notice.

(5) A shareholder who fails to demand payment or fails (in the case of certificated shares) to deposit certificates

as required by a notice pursuant to subsection (4) has no right under this section or 35-1-810 to receive payment for his shares. If the shares are not represented by certificates, the corporation may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action or the release of restrictions under the terms of subsection (6). The dissenter retains all other rights of a shareholder until those rights are modified by effectuation of the proposed corporate action.

(6) (a) Within 60 days after the date set for demanding payment and depositing certificates, if the corporation has not effectuated the proposed corporate action and remitted payment for shares pursuant to subsection (6)(c), it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.

(b) When uncertificated shares have been released from transfer restrictions and deposited certificates have been returned, the corporation may at any later time send a new notice conforming to the requirements of subsection (4), with like effect.

(c) Immediately upon effectuation of the proposed corporate action or upon receipt of demand for payment if

the corporate action has already been effectuated, the corporation shall remit to dissenters who have made demand and, if their shares are certificated, have deposited their certificates, the amount that the corporation estimates to be the fair value of the shares, with interest if any has accrued. The remittance shall be accompanied by:

(i) the corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the date of remittance, together with the latest available interim financial statement;

(ii) a statement of the corporation's estimate of fair value of the shares; and

(iii) a notice of the dissenter's right to demand supplemental payment.

(7) (a) If the corporation fails to remit as required by subsection (6) or if the dissenter believes that the amount remitted is less than the fair value of his shares or that the interest is not correctly determined, he may send the corporation his own estimate of the value of the shares or of the interest and demand payment of the deficiency.

(b) If the dissenter does not file such an estimate within 30 days after the corporation's mailing of its remittance, he shall be entitled to no more than the amount remitted.

(8) (a) Within 60 days after receiving a demand for

payment pursuant to subsection (7), if any such demands for payment remain unsettled, the corporation shall file in an appropriate court a petition requesting that the fair value of the shares and interest thereon be determined by the court.

(b) An appropriate court is the district court in the county of this state where the registered office of the corporation is located. If, in the case of a merger, consolidation, or exchange of shares, the corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the foreign corporation was last located.

(c) All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each such dissenter. If a dissenter is a nonresident, the copy may be served on him by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power as may be specified in the order of their appointment

or in any amendment thereof. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.

(e) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.

(f) If the corporation fails to file a petition as provided in subsection (8)(a), each dissenter who made a demand and who has not already settled his claim against the corporation shall be paid by the corporation the amount demanded by him, with interest, and may sue therefor in an appropriate court.

(9) (a) The costs and expenses of any proceeding under subsection (8), including the reasonable compensation and expenses of appraisers appointed by the court, shall be determined by the court and assessed against the corporation, except that any part of the costs and expenses shall be apportioned and assessed as the court may consider equitable against all or some of the dissenters who are parties and whose action in demanding supplemental payment the court finds to be arbitrary, vexatious, or not in good faith.

(b) Fees and expenses of counsel and of experts for the respective parties may be assessed as the court

considers equitable against the corporation and in favor of any or all dissenters if the corporation failed to comply substantially with the requirements of this section. The fees and expenses shall be assessed against either the corporation or a dissenter in favor of any other party if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section and 35-1-810.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and should not be assessed against the corporation, it may award to these counsel reasonable fees, to be paid out of the amounts awarded to the dissenters who were benefited.

(10) (a) Notwithstanding the foregoing provisions of this section, the corporation may elect to withhold the remittance required by subsection (6) from any dissenter with respect to shares of which the dissenter, or the person on whose behalf the dissenter acts, was not the beneficial owner on the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. With respect to such shares, the corporation shall, upon effectuating the corporate action, state to each dissenter its estimate of the fair value of the shares,

state the rate of interest to be used, explaining the basis thereof, and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.

(b) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, he may, within 30 days after the date of mailing of the corporation's offer, mail the corporation his own estimate of fair value and interest and demand their payment. If the dissenter fails to do so, he is entitled to no more than the corporation's offer.

(c) If the dissenter makes a demand as provided in subsection (b), the provisions of subsections (8) and (9) apply to further proceedings on the dissenter's demand.

Section 50. Section 35-1-901, MCA, is amended to read:

"35-1-901. Voluntary dissolution by incorporators or initial board of directors -- filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time ~~within 2 years after the date of the issuance of its certificate of incorporation~~ in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators or initial board of directors and verified by them and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid;

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of dissolution to which he shall affix the other duplicate original.

(3) The certificate of dissolution, together with the

duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, the board of directors, or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease."

Section 51. Section 35-1-1002, MCA, is amended to read:

"35-1-1002. Activities not to be considered transacting business. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state for the purposes of this chapter by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to

its securities;

(5) effecting sales through independent contractors;

(6) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(7) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property ~~if there is no activity conducted by the out-of-state borrower or lender with respect to the loan except periodic inspection of the security~~;

(8) securing or collecting debts or enforcing any rights in property securing the same;

(9) transacting any business in interstate commerce;

(10) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature."

Section 52. Section 35-1-1006, MCA, is amended to read:

"35-1-1006. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) shall contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words or such corporation shall, for use in this state,

add at the end of its name one of such words or an abbreviation thereof;

~~(2)~~(2) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

~~(3)~~(3) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision does not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(a) a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic corporation, to that of any foreign corporation authorized to transact business in this state, or to any name reserved or registered as provided in this chapter and which fictitious name is registered as an assumed business name under the provisions of ~~30-13-203~~

TITLE 30, CHAPTER 13, PART 2;

(b) the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(c) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this state."

Section 53. Section 35-1-1007, MCA, is amended to read:

"35-1-1007. Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise complied with the provisions of ~~this chapter~~ 35-1-1006."

Section 54. Section 35-1-1008, MCA, is amended to read:

"35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state,

shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

~~(b)~~(c) the date of incorporation and the period of duration of the corporation;

~~(c)~~(d) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

~~(d)~~(e) the address of the ~~proposed~~ registered office of the corporation in this state and the name of its ~~proposed~~ registered agent in this state at such address;

~~(e)~~(f) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

~~(f)~~(g) the names and respective addresses of the directors and officers of the corporation;

~~(g)~~(h) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, ~~par value of shares, shares without par value,~~ and

series, if any, within a class;

~~(h)~~(i) a statement of the aggregate number of issued shares, itemized by classes~~, par value of shares, shares without par value~~ and series, if any, within a class; and

~~(i) a statement expressed in dollars of the amount of stated capital of the corporation as defined in this chapter~~

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such application."

Section 55. Section 35-1-1009, MCA, is amended to read:

"35-1-1009. Filing of application -- issuance of certificate of authority. (1) Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and

all amendments thereto, duly ~~certified by manuel or facsimile signature~~ authenticated by the proper officer of the state or country of incorporation.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(c) issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

(3) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative."

Section 56. Section 35-1-1015, MCA, is amended to read:

"35-1-1015. Filing required for amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the

office of the secretary of state a copy of such amendment, duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority."

Section 57. Section 35-1-1017, MCA, is amended to read:

"35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its

registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class, as of the date of such application;

(g) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class, as of the date of such application;

~~(f)~~(h) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to said application to the effect that the department is satisfied from the available evidence that all such taxes imposed have been paid. The issuance of such certificate does not relieve the corporation from liability for any taxes, penalties, or

interest due the state of Montana~~;~~ and

(i) such additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by such foreign corporation as prescribed by this chapter.

(2) The application for withdrawal shall be made ~~in a form~~ on forms prescribed and furnished by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the application or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him."

Section 58. Section 35-1-1101, MCA, is amended to read:

"35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

~~(a)~~ (a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered

agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by ~~classes, par value of shares, shares without par value,~~ class and series, if any, within a each class; and

(f) a statement of the aggregate number of issued shares, itemized by ~~classes, par value of shares, shares without par value,~~ class and series, if any, within a each class~~.~~

~~(g) a statement, expressed in dollars, of the amount of stated capital of the corporation as defined in this chapter.~~

(2) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation

located within this state and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12 months ended on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If on December 31 preceding the time herein provided for the filing of such report, the corporation had not been authorized to transact business in this state for a period of 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in this state and such December 31. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subsection need not be set forth in such report.

(3) Such annual report must be ~~in--a--form~~ on forms prescribed by the secretary of state. The information therein contained must be given as of the date of the execution of the report~~--except--as--to--the-information required-by-subsection-(1)(g)-which-must-be-given-as-of--the close--of--business--on--December-31-next-preceding-the-date herein-provided-for-the-filing-of-such-report~~. It must be executed by the corporation by its president, a

vice-president, secretary, an assistant secretary, or treasurer and verified by the officer executing the report, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation and verified by such receiver or trustee."

Section 59. Section 35-1-1202, MCA, is amended to read:

"35-1-1202. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $20;

(2) filing articles of amendment and issuing a certificate of amendment, $20;

(3) filing restated articles of incorporation and issuing a restated certificate of incorporation, $20;

(4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $20;

(5) filing an application to reserve a corporate name, $2;

(6) filing a notice of transfer of a reserved corporate name, $2;

(7) filing a statement of change of address of registered office or change of registered agent, or both, $2;

(8) filing a statement of the establishment of a series of shares, $5;

~~(9)--filing--a-statement-of-cancellation-of-shares,-$5;~~

~~(10)-filing-a-statement-of-reduction-of-stated-capital,-$5;~~

~~(11)~~(9) filing a statement of intent to dissolve, $2;

~~(12)~~(10) filing a statement of revocation of voluntary dissolution proceedings, $2;

~~(13)~~(11) filing articles of dissolution and issuing a certificate of dissolution, $5;

~~(14)~~(12) filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, $20;

~~(15)~~(13) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, $20;

~~(16)~~(14) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, $10;

~~(17)~~(15) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, $20;

~~(18)~~(16) filing an application for withdrawal of a

foreign corporation and issuing a certificate of withdrawal, $5;

~~(19)~~(17) filing an annual report, $5;

~~(20)~~(18) filing any other statement or report, except an annual report, of a domestic or foreign corporation, $2."

Section 60. Section 35-1-1205, MCA, is amended to read:

"35-1-1205. License fees payable by foreign corporation. (1) The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state the sum of $50 as an initial license fee.

(2) Thereafter the secretary of state shall fix the license fee for each foreign corporation as follows:

(a) He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the preceding section if it had authorized shares ~~having--a-par-value-of-$100-per-share,~~ in an amount equal to the ~~stated--capital~~ number of authorized shares of the reporting foreign corporation shown by its filed annual report.

(b) Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the

gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report.

(c) From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

(3) The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license fee shall be paid by the corporation to the secretary of state within 30 days after the mailing of the notice. Failure to pay such additional license fee within said 30-day period shall render such corporation liable to the secretary of state for a penalty equal to 10% of the amount of the additional license fee, together with interest at the rate of 1/2 of 1% per month on the fee plus penalty until paid.

(4) Foreign corporations which entered Montana for the

transaction of business prior to December 31, 1968, shall be entitled to employ within this state an amount of stated capital equal to the greatest amount employed in the state during the period of their qualification prior to December 31, 1968, without the payment of additional fees."

Section 61. Codification instruction. Sections 4, 5, 23, 29, 38, 39, and 49 are intended to be codified as an integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to sections 4, 5, 23, 29, 38, 39, and 49.

Section 62. Repealer. Sections 35-1-608, 35-1-613 through 35-1-616, 35-1-701 through 35-1-705, 35-1-802, and 35-1-811, MCA, are repealed.

-End-

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION, 1981

MARCH/APRIL

Name	Date 13	16	17	18	19	20	23	24	25	26	27	28	2	13
Kerry Keyser, Chairman	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Carl Seifert, Vice Chr	X	X	X	X	A	X	X	X	X	X	X	X	X	X
Gary Bennett	A	X	X	X	X	X	X	X	X	X	X	X	A	X
Alison Conn	X	X	X	A	X	X	X	X	X	X	X	X	X	X
Aubyn Curtiss	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ralph Eudaily	X	X	X	X	X	E	X	X	X	X	X	X	X	X
Tom Hannah	X	X	A	X	X	E	X	X	X	X	X	X	X	X
Dennis Iverson	X	X	X	A	X	X	E	X	X	X	X	X	A	X
John Matsko	X	X	X	X	X	X	X	X	X	X	X	A	X	X
Jean McLane	X	X	X	X	X	X	X	X	X	X	X	X	X	A
Bob Anderson	E	X	X	X	X	X	X	X	X	X	X	X	X	X
Fritz Daily	X	X	A	A	X	X	X	X	X	X	X	X	A	X
Hubert Abrams	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Herb Huennekens	E	X	A	A	X	X	X	X	X	X	X	X	X	X
Art Shelden	X	X	X	A	X	X	X	X	A	X	X	X	X	X
Michael Keedy	X	X	X	A	X	X	X	X	X	X	X	X	A	A
Wes Teague	X	X	E	A	X	X	X	X	X	X	X	X	X	E
Dan Yardley	X	X	X	X	X	X	X	X	X	X	X	X	X	A
Dave Brown	X	X	X	X	X	X	X	X	X	X	X	X	X	X

X = Present
A = Absent
E = Excused Absent

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 27, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present. Jim Lear, Legislative Council, was present.

SENATE BILL 475 SENATOR MAZUREK, sponsor, stated this bill's purpose is to adopt revisions to the Model Business Corporations Act recommended by the American Bar Association. There has been a great deal of work put into this bill. The bill does not have any impact on existing corporations. It does not require existing corporations to change anything or update anything. This only applies to new corporations or existing corporations that are changing. There is no reference or update needed of bylaws.

In 1967 the state passed the Montana Business Corporation Act and within three months it was obsolete. Most Montana corporations are closely held family operations. Sections 25, 29 and 38 codify practices in the state. This deals with transfer of shares and stock. The whole idea is groups of individuals who form a corporation want to have the benefits of a corporation but are restricted on stock. This would help that. Section 29 deals with shareholder control. The bill requires that the shareholder can control the corporation without having to set up a board of directors. The bill allows the board to enter into contracts without having it voted on by all the shareholders.

Par value and share value are done away with. The bill sets up a new standard for dividends. Many of the changes in the bill strike out capital surplus, par value and share value.

RONALD WYSE, University of Montana Law School, was in support of the bill. This bill has been a project of the State Bar for the last three years.

The Montana Business Corporation Act was outdated when it came into effect. The model act was effective January 1, 1969.

Section 16 deals with the board of directors of the corporation. Present law says the board of directors must manage the corporation. This will change it to management shall be exercised under the authority of the board. The second change is a provision in the model act. Shareholders would be able to exercise control where they would not before. Montana law does not have an explicit standard for the board of directors. A director must perform duties in good faith. Subsection 3 allows members of the board to rely on reports from accountants, outside counsel, etc. One of the unfortunate consequences is to get outside people to serve on a board. This is an important change.

In corporate matters if a director disagrees he can dissent. Section 23 is a new section from the model act. It concerns a provision on directors' conflicts of interest. Members of the board are likely to have other outside businesses. If the corporation is to enter other contracts with them as an outside business there is a problem. This gives full disclosure.

Section 26, subsection 3 regards agreements among shareholders. Present law has a provision with voting trusts. It is a means of controlling the vote. There must be some ability to control what the vote will be. It lacks flexibility and is limited to ten years. Subsection 3 states agreements against shareholders are valid. This is an important means of delegating control.

Section 25, information on subsection 3 deals with shareholder agreements. Difficulty may result if there are three shareholders in a closely held operation if two had 30% ownership and one had 40%. There could be a voting agreement between the two with 30%. The voting agreement did not have an agreement for proxy. This provision would permit irrelevant proxys. If a corporation hires an executive the person who is hired would want an exmployment contract.

Section 38 refers to restriction on transfer of shares. Of all the corporations in Montana 99% are closely held with less than ten shareholders. It is inconceivable you would have a closely held corporation without stockholders ability to sell. This permits stock transfer restrictions. It is a provision that came from New York statute.

Section 48 - several significant events in a corporation cannot occur unless the shareholders agree - including merger, sale of assets or liquidation. Present law requires that for any of these to take place the board must approve and then 2/3 of the shareholders must agree. It is possible that 1/3 would not agree. When you have the kind of event that needs shareholders approval you have consentors' rights. The change in section 48 simply expands where dissenters rights are given. Any time there is an amendment to this that affects rights, materially and adversely, it gives the board and shareholders the right to dissent.

Section 49 modifies the procedure to obtain the dissenter rights. Present law indicates for dissenters' rights you must go to the meeting and indicate your opposition. Within 10 days you must give written notice to have your shares purchased at cost. Most people do not understand this. The new section does not change the impact, it makes it more fair. When notice is written out you must send them copies of the statutes. You no longer will have the 10 day notice requirement. The corporation has an obligation to tell the people who did not vote of their dissenters' rights. Idaho has this law and has no problem at all. This would

eliminate unfairness. If the parties disagree as to the value, they have the option of going to court. If either party refuses to agree, attorney's fees can be charged. This is the sole remedy that the shareholder has.

Section 39 - historically par value was meaningful when the stock certificate was issued. That has changed and par value is meaningless. Attorneys now refer to no par or penny par. Provisions in the present code create difficulties. There might be some corporations that operated for 10-15 years where they might not have made money. A long term capital deficit occurs. Present law requires payment of dividends out of surplus. If the earnings are not adequate you have to go to things like capital surplus and change value. This change is in the model act and does away with par value.

Section 39 states the task in distribution is to see if the corporation meets its debts when they are due. The determination of real value is not limited to book cost. If you have the money, the board of directors in good faith gives assets to shareholders.

Section 37 eliminates treasury stock, which is stock issued and reacquired by the corporation. It makes it difficult to determine how many stocks are outstanding.

Section 40 deals with the merger, consolidation and share exchange of one corporation for a larger market. There are many tax benefits for share exchange. Present law has no provision for this. The board of directors approving the exchange and the shareholders must have 2/3 vote. This has been added to the model act. Subparagraph 1 is a provision on mergers, 2 is consolidation and 3 is a new part on exchange of shares.

Section 47 is a provision in Montana law that is not in the model act. One of the important events is the sale of assets in a corporation. This needs 2/3 vote of the shareholders approval. Subparagraph 5 permits the amendments of articles of the corporation so the board of directors can sell the assets. A majority vote is needed. This would change it from a 2/3 vote to a majority vote.

Section 17 of the bill allows the board of directors to be one or more people instead of the now required three. Professional service corporations only require one director. It is unfair to ask a relative to be a director just so you can comply with the law requiring three directors. He is taking on a great responsibility and is subjected to liability.

Section 35 is a provision that will not apply to many corporations immediately but will in the future. Large corporations have much paperwork which is a problem. There is no need to have ownership

reflected by the making of a stock certificate. There is a growing trend nationally to do this. It is in the model act.

Section 4 is a new section on the indemnification of directors and officers. Subsection 15 permits indemnification under two sets of circumstances; if he is judged not to violate a standard and if there are any other standards in the provision. This distinguishes between action of a director from the action of an individual because of a breach of contractual duty to the corporation. If the director is sued because he breached his duty to the corporation there should be a stricter standard than an agent who was involved in a transaction that resulted in a lawsuit. Attorney fees would be included. Prior to 1964 if you had inside information as to the site of a mineral field you would buy stock and tell others to also buy. In 1964 that was found to be a violation of federal law. Standards are set forth so it cannot be increased or lessened. It is a good standard that requires directors to show good faith conduct in the best interest of the corporation.

Section 29 permits in the articles of the corporation a provision allowing the shareholders to run the corporation directly. Present law requires at least one annual meeting of the board and one of the shareholders. Other decisions must be made at a special meeting with proper notice given. In small corporations, if you fail to go through the procedure you can lose limited liability. This procedure is not mandated but will allow provisions to eliminate the directors meeting.

WARD SHANAHAN, State Bar Business Section, stated the section has been studying this piece of legislation. The arrangement of the new code is more logical. The Montana arrangement has been brought to the attention of the American Bar Association. It will be more simple in the future to handle this. SHANAHAN supported the bill.

ALAN ROBERTSON, representing the Secretary of State, supported the bill. ROBERTSON gave EXHIBIT 1, a proposed amendment to the bill. The money goes to the general fund and not the Secretary of State's office. There is a need for revenue in the bill. Two dollars is the fee for changing an agent. A minimum of two certified letters must be sent out for this. This costs the state money.

A statement of intent is needed for the bill. The statement of intent from Senate Bill 161 would do the job.

There were no further proponents.

There were no opponents.

In closing, SENATOR MAZUREK stated by changing the fee it would allow the Secretary of State to set the fee. He agreed the statement of intent from Senate Bill 161 would be good.

REP. HANNAH asked about a corporation having much real estate and distribution. WYSE replied the decision to issue dividends is made by the board of directors. Shareholders will not try and force a distribution.

REP. HANNAH asked about the dissenter's rights. Why must the information be sent out twice? It is so cumbersome to the corporation. SHANAHAN replied there are many claims that corporations do not allow the stockholder enough voice in the operation. It is cumbersome but the American Bar feels it is necessary to meet the needs of the law. WYSE stated present law requires notice to shareholders. The stockholders must be informed they have dissenter's rights.

REP. SEIFERT asked about the liability of directors. WYSE replied this section on page 50, lines 5-10 establishes the liability of the director if he violates certain standards. The sense of the new language refers back to the standard of care. Lines 5-10 restates the present law that a director has a right to contribution.

REP. KEYSER asked why language on pages 47-49 were being stricken. SENATOR MAZUREK replied it is part of the original bill. It creates a standard of care outlining specific requirements about liability. It goes with section 16.

REP. DAILY stated he is involved in a small corporation as a director just for the sake of being a director for compliance with law. Would he be liable for suit. WYSE replied a lot of this is case law. He could be liable. Three directors are necessary along with having officers for the corporation. If you are a director you would be liable, if you were an officer you would not be directly liable. If a shareholder is an officer and runs under someone, he is liable. Limited liability goes to the investor. The liability of an officer is different. An officer is an agent. Directors do not receive a salary. Many people are officers to fill a requirement of law. If you are a director you have a duty to find out and know what is happening in the corporation.

REP. BENNETT asked about subsection (b) on page 39 concerning knowledge. WYSE replied paragraph 3 permits a director to reply on this. Knowledge is not defined in the code. It is by case law actual knowledge was that which a responsible person should know. If you are a director and outside accountants provide a financial statement saying the corporation is worth $100,000 and you know that is wrong, you have an obligation to the corporation.

REP. BENNETT asked how difficult it is to prove that person is not acting in good faith. WYSE stated the burden is on the one claiming it was not done in good faith.

It was stated by SENATOR MAZUREK that sections not in the model act are section 25 - proxy on material, section 29 - shareholders control and section 38 - restrictions on shares.

HOUSE BILL 853 REP. SHONTZ, sponsor, told the committee the purpose of this bill is to revise the laws relating to distribution of the decisions of the Montana Supreme Court. This is at the request of the subcommittee on appropriations. There is not enough money to update the Montana Reports. There are normally two issues a year of the report from the Montana Supreme Court. The printing is two years behind schedule. The documents, thus being two years behind, are not as useful as they should be. One way to address the problem is for the state to print 300 copies of the books and distribute them at no cost to state agencies across Montana. This will reduce the number of free books. Attorneys would purchase the publication from the printer.

Proponent from the Supreme Court, MIKE ABLEY, stated the bill is a combination of effort by the fiscal analyst and himself. The current reports are out of date. Attorneys have no use for obsolete material. In most other states the attorneys purchase the most copies, but here the state does. There is much expense to the state because of this. ABLEY stated his office has contacted all the attorneys in the state and state agencies. If the material was brought up to date attorneys would purchase the books. County attorneys receive the publication free as does the clerk of the court in each county.

A number of publishers would be interested in printing the reports. If attorneys had to pay for these books instead of receiving them free they might determine they actually do not need them.

REP. EARL LORY, District 99, was in support of the bill. If attorneys need the books they will buy them. It will be of help to the budget of the state. The fiscal year '82 has a budget of $82,000. If this bill is passed the money saved will help offset the budget.

There were no further proponents.

There were no opponents.

In closing, REP. SHONTZ stated the distribution of the books would be changed from the Secretary of State to the Supreme Court since the Supreme Court has actually been doing this. Most attorneys receive the Pacific Reporter, which is a current publication of the western states cases, instead of the state reporter.

prior to October 1 then on September 30 no action to be pending before October 1 for the conveyance. JIM LEAR stated that is why two different dates are in the existing statute.

REP. KEEDY moved to reconsider action on the amendment. The motion carried.

REP. KEEDY moved to change the first date to January 1, 1981 and to leave the rest of the amendment as is. The motion carried unanimously.

The motion of do pass as amended was made by REP. SEIFERT. The motion carried unanimously.

REP. KEEDY was assigned to carry the bill.

SENATE JOINT RESOLUTION 20 REP. HUENNEKENS moved do pass. The motion carried unanimously.

SENATE BILL 475 REP. HANNAH moved do pass. The motion carried with BROWN and MATSKO voting no.

REP. YARDLEY moved the statement of intent from Senate Bill 161 be adopted. EXHIBIT 4. The motion carried.

HOUSE BILL 853 REP. BROWN moved do pass.

REP. BROWN stated he was against the amendments that were proposed during the meeting.

The motion of do pass carried unanimously.

The meeting adjourned at 12:15 p.m.

Kerry Keyser - Chairman
KERRY KEYSER, CHAIRMAN

mr

Exhibit 1

PROPOSED AMENDMENT

S.B. 475

P. 122, strike line 8 through the end of section 59.

Insert in place thereof the following:

"35-1-1202. Secretary of State. Authorized and Required to Establish Fees Commensurate With Costs. The secretary of state is authorized and required to set filing fees reasonably related to the costs of processing the applications and certificates. The secretary of state may establish fees for filing articles of incorporation, articles of amendment, issuing a certificate of amendment, restated articles, issuing a restated certificate of incorporation, articles of merger or consolidation, issuing a certificate of merger or consolidation, filing an application to reserve a corporate name, a notice of transfer of a reserved corporate name, a statement of change of address of registered office or change of registered agent, filing a statement of the establishment of a series of shares, filing a statement of intent to dissolve, filing a statement of revocation of voluntary dissolution proceedings, filing articles of dissolution and issuing a certificate of dissolution, filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, filing an annual report and filing any other statement or report."

Exhibit 5

March 27, 1981

STATEMENT OF INTENT

SENATE BILL 475

House Judiciary Committee

A statement of intent is required for this bill because section 59, as amended by the House Judiciary Committee, would grant the secretary of state the authority to adopt rules establishin fees for filing documents and issuing certificates required by Title 35, chapter 1. Rules are to be adopted under the Montana Administrat Procedures Act. The documents and certificates for which filing fees may be charged under those rules shall include those specifically mentioned in section 35-1-1202 prior to amendment by Senate Bill 475 and any others required under Title 35, chapter 1. The rules must allow the filing and billing for filing fees to be accomplished by mail.

First adopted by the House Judiciary Committee on the 27th day of March, 1981.

KERRY KEYSER, Chairman

STATE PUB. CO.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 475 Date 3/27/81

SPONSOR Mazurek

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Ronald Wyse	5785 Highland Missoula	U. of Mont. Law School	X	
Alan D Robertson	Helena	Sec. of State	X	
Lloyd Hanahan	Helena	Chm STATE BAR BUSINESS SECTION	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

STATE PUBLISHING CO HELENA MONTANA

March 27, 1981

STATEMENT OF INTENT

SENATE BILL 475

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First adopted by the House Judiciary Committee on the 27th day of March, 1981.

HOUSE JUDICIARY MARCH 27, 1981

Respectfully report as follows: That SENATE Bill No. 475

BE AMENDED AS FOLLOWS:

1. Page 122, line 8 through line 5 on page 124.
Following: "35-1-1202." on line 8, page 122
Strike: "remainder of line 8 through end of line 5 on page 124
Insert: "Secretary of state to establish fees commensurate with costs. The secretary of state shall establish fees for filing documents and issuing certificates as required by this chapter. The fees must be reasonably related to the costs of processing the documents and certificates. The secretary of state shall maintain records sufficient to support the fees established under this section."

STATEMENT OF INTENT ATTACHED

STATEMENT OF INTENT

SENATE BILL 475

House Judiciary Committee

A statement of intent is required for this bill because section 59, as amended by the House Judiciary Committee, would grant the secretary of state the authority to adopt rules establishing fees for filing documents and issuing certificates required by Title 35, chapter 1. Rules are to be adopted under the Montana Administrative Procedure Act. The documents and certificates for which filing fees may be charged under those rules shall include those specifically mentioned in 35-1-1202 prior to amendment by Senate Bill 475 and any others required under Title 35, chapter 1. The rules must allow the filing and billing for filing fees to be accomplished by mail.

First adopted by the House Judiciary Committee on the 27th day of March, 1981.

SENATE BILL NO. 475

INTRODUCED BY MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT SUBSTANTIALLY ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109, 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THROUGH 35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406 THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509, 35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607, 35-1-610 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH 35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THROUGH 35-1-1009, 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205, MCA; AND REPEALING SECTIONS 35-1-608, 35-1-613 THROUGH 35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-1-102, MCA, is amended to read:

"35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

(6) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(7) "Shareholder" means one who is a holder of record of shares in a corporation and is synonymous with the term "stockholder". If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified

REFERENCE BILL

person or persons. The resolution shall set forth the classification of a shareholder who may certify; the purpose or purposes for which the certification may be made; the form of certification and information to be contained therein; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the corporation; and such other provisions with respect to the procedure as are considered necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be considered, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

~~(9) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares.~~

~~(10) "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.~~

~~(11) "Stated capital" means, at any particular time:~~

~~(a) the sum of the par value of all shares of the corporation having a par value that have been issued;~~

~~(b) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and~~

~~(c) such amounts not included in subsections (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law,~~

~~irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation for the purpose of computing fees, franchise taxes, and other charges imposed by this chapter.~~

~~(12) "Surplus" means the excess of the net assets of a corporation over its stated capital.~~

~~(13) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.~~

~~(14) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.~~

~~(15) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.~~

~~(16)~~(9) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute filing under this chapter.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

Section 2. Section 35-1-108, MCA, is amended to read:

"35-1-108. General powers. Each corporation shall have power to:

(1) have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain and defend, in its corporate name;

(3) have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its

property and assets;

(6) lend money ~~to guarantee the obligations of, and otherwise~~ and use its credit to assist its employees ~~and upon the affirmative vote of the holders of a majority of the outstanding shares of the corporation which are entitled to vote for directors, lend money to, guarantee the obligations of, and otherwise assist its directors and officers, but no loans shall be made by a corporation secured by its shares~~;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, associations, partnerships, joint ventures, cooperatives, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country;

(11) elect or appoint officers and agents of the corporation and define their duties and fix their compensation;

(12) make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and in time of war to make donations in aid of war activities;

(14) ~~in time of war,~~ transact any lawful business in aid of ~~the United States in the prosecution of the war~~ governmental policy;

~~(15) indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of~~

another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation, and make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution adopted by the shareholders after notice;

~~(16)~~(15) pay pensions and retirement benefits and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

~~(17)~~(16) cease its corporate activities and surrender its corporate franchise;

(17) be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;

(18) have and exercise all powers necessary or convenient to effect any or all of the purposes for which

the corporation is organized."

Section 3. Section 35-1-109, MCA, is amended to read:

"35-1-109. Liability of and to ostensible corporations. ~~(1)~~ All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

~~(2) One who assumes an obligation to an ostensible corporation as such cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.~~"

NEW SECTION. Section 4. Indemnification of directors and officers. (1) As used in this section, the following definitions apply:

(a) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.

(b) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the

predecessor's existence ceased upon consummation of such transaction.

(c) "Expenses" include attorneys' fees.

(d) "Official capacity" means:

(i) when used with respect to a director, the office of director in the corporation; and

(ii) when used with respect to a person other than a director as contemplated in subsection (9), the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

(e) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(f) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative.

(2) (a) A corporation may indemnify any person made a party to any proceeding by reason of the fact that he is or was a director if:

(i) he conducted himself in good faith; and

(ii) he reasonably believed:

(A) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(B) in all other cases, that his conduct was at least not opposed to its best interests; and

(iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) Indemnification may be made against judgments, penalties, fines, settlements, and reasonable expenses, actually incurred by the person in connection with the proceeding. However, if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect to any proceeding in which the person shall have been adjudged to be liable to the corporation. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent may not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

(3) A director may not be indemnified under subsection (2) in respect to any proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he has been adjudged to be liable on the basis that personal benefit was improperly

received by him.

(4) (a) Unless limited by the articles of incorporation:

(i) a director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in subsection (2) shall be indemnified against reasonable expenses incurred by him in connection with the proceeding; and

(ii) a court of appropriate jurisdiction, upon application of a director and such notice as the court shall require, may order indemnification in the following circumstances:

(A) if it determines a director is entitled to reimbursement under subsection (4)(a)~~(i)~~(I), the court shall order indemnification, in which case the director shall be entitled to recover the expenses of securing such reimbursement; or

(B) if it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the standards of conduct set forth in subsection (2) or has been adjudged liable under subsection (3), the court may order such indemnification as the court considers proper, except that indemnification with respect to any proceeding by or in the right of the corporation or in which liability has been

adjudged pursuant to subsection (3) shall be limited to expenses.

(b) A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

(5) (a) No indemnification under subsection (2) may be made by the corporation unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standards of conduct set forth in subsection (2). Such determination shall be made:

(i) by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or

(ii) if such a quorum cannot be obtained, then by a majority vote of a committee of the board, duly designated to act in the matter by a majority vote of the full board, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding; or

(iii) by special legal counsel selected by the board of directors or a committee thereof by vote as set forth in (a)(I) or ~~(b)~~ (A)(II) of subsection (5) or, if the requisite quorum of the full board cannot be obtained and such

committee cannot be established, then by a majority vote of the full board, in which selection directors who are parties may participate; or

(iv) by the shareholders.

(b) Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in subsection (5)(a)(iii) for the selection of such counsel. Shares held by directors who are parties to the proceeding may not be voted on the subject matter under this subsection.

(6) Reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding upon receipt by the corporation of:

(a) a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation as authorized in this section; and

(b) a written undertaking by or on behalf of the director to repay such amount if it is ultimately determined

that he has not met such standard of conduct and after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The undertaking required by this subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make the repayment. Determinations and authorizations of payments under this subsection shall be made in the manner specified in subsection (5).

(7) No provision for the corporation to indemnify or to advance expenses to a director who is made a party to a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except as contemplated by subsection (10), is valid unless consistent with this section or, to the extent that indemnity hereunder is limited by the articles of incorporation, consistent therewith. Nothing contained in this section limits the corporation's ability to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(8) For purposes of this section, the corporation shall be considered to have requested a director to serve an employee benefit plan where the performance by him of his

duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be considered fines. Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be considered to be for a purpose that is not opposed to the best interests of the corporation.

(9) Unless otherwise limited by the articles of incorporation:

(a) an officer of the corporation shall be indemnified as and to the extent provided in subsection (4) for a director and shall be entitled to seek indemnification pursuant to the provisions of subsection (4) to the same extent as a director;

(b) a corporation has the power to indemnify and to advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to a director pursuant to this section; and

(c) a corporation, in addition, has the power to indemnify and to advance expenses to an officer, employee, or agent who is not a director to such further extent,

consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

(10) A corporation has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise or of an employee benefit plan, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(11) Any indemnification of or advance of expenses to a director in accordance with this section, if arising out of a proceeding by or in the right of the corporation, shall be reported in writing to the shareholders with the notice of the next shareholders' meeting or before.

NEW SECTION. Section 5. Loans to employees and directors. A corporation may not lend money to or use its credit to assist its directors without authorization in the particular case by its shareholders but may lend money to

and use its credit to assist any officer or employee of the corporation or of a subsidiary, including any such officer or employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

Section 6. Section 35-1-202, MCA, is amended to read:

"35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized, which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter;

(d) the aggregate number of shares which the corporation shall have authority to issue~~--if--such--shares are--to--consist-of-one-class-only,-the-par-value-of-each-of such-shares-or-a-statement--that--all--of--such--shares--are without--par--value-or~~ and, if such shares are to be divided into classes, the number of shares of each class ~~and--a statement--of-the-par-value-of-the-shares-of-each-such-class or-that-such-shares-are-to-be-without-par-value~~;

(e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of

the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional ~~or-treasury~~ shares of the corporation;

~~(h)--any-provision,-not-inconsistent--with--law,--which the--incorporators--elect--to--set--forth-in-the-articles-of incorporation-for-the-regulation-of-the-internal-affairs--of the--corporation,--including--any--provision-restricting-the transfer-of--shares--and--any--provision--which--under--this chapter--is--required--or--permitted--to-be-set-forth-in-the bylaws~~

~~(i)~~(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

~~(j)~~(i) the number of directors constituting the initial board of directors and the names and addresses of

the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

~~(k)~~(i) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) the direction of the management of the business and the regulation of the affairs of the corporation;

(b) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(c) the par value of any authorized shares or class of shares;

(d) any provision that, under this chapter, is required or permitted to be set forth in the bylaws.

~~(2)~~(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter."

Section 7. Section 35-1-206, MCA, is amended to read:

"35-1-206. Power to amend articles of incorporation. (1) A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired so long as its articles of incorporation as amended

contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment and if a change in shares or the rights of shareholders or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

(2) In particular and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as to:

(a) change its corporate name;

(b) change its period of duration;

(c) change, enlarge, or diminish its corporate purposes;

(d) increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;

(e) ~~increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued~~ provide, change, or eliminate any provision with respect to the par value of any shares or class of shares;

(f) exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;

(g) change the designation of all or any part of its

shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;

~~(h) --change--shares--having-a-par-value,-whether-issued or-unissued,-into-the-same-or-a-different-number--of--shares without--par--value--and-to-change-shares-without-par-value, whether-issued-or-unissued,-into-the--same--or--a--different number-of-shares-having-a-par-value~~

~~(i)~~(h) change the shares of any class, whether issued or unissued ~~and-whether-with-or-without-par--value,~~ into a different number of shares of the same class or into the same or a different number of shares, ~~either-with-or-without par-value,~~ of other classes;

~~(j)~~(i) create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;

~~(k)~~(j) cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;

~~(l)~~(k) divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares

of such series;

~~(m)~~(l) authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

~~(n)~~(m) authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

~~(o)~~(n) revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

~~(p)~~(o) grant to shareholders of any class the preemptive right to acquire additional ~~or-treasury~~ shares of the corporation, whether then or thereafter authorized."

Section 8. Section 35-1-207, MCA, is amended to read:

"35-1-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) ~~The~~ If shares have been issued, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of or stock dividend in the corporation's own shares or solely to do so and to change the number of authorized shares in proportion thereto may be adopted by the board of directors and the provisions for adoption by shareholders do not apply, unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation that contain a statement that, except for the designated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation, together with the designated amendment, supersede the original articles of incorporation and all amendments thereto.

(b) Written notice setting forth the proposed

amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting. ~~If the amendment shall involve an increase of authorized shares, at least 30 days' notice of the meeting for acting upon such amendment shall be given to shareholders entitled to vote at such meeting.~~

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting."

Section 9. Section 35-1-208, MCA, is amended to read:

"35-1-208. Class voting on amendments. The holders of the outstanding shares of a class shall be entitled to vote

as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of such class;

~~(2) increase or decrease the par value of the shares of such class;~~

~~(3)~~ (2) effect an exchange, reclassification, or cancellation of all or part of the shares of such class;

~~(4)~~ (3) effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of such class;

~~(5)~~ (4) change the designations, preferences, limitations, or relative rights of the shares of such class~~;~~. If any proposed amendment would change the designations, preferences, or relative rights of the shares of any series of such class but would not affect all of the shares of such class, then only the shares of the series so affected by the amendment may be considered a separate class for the purpose of this section.

~~(6)~~ (5) change the shares of such class~~, whether with or without par value,~~ into the same or a different number of shares~~, either with or without par value,~~ of the same class or another class or classes;

~~(7)~~ (6) create a new class of shares having rights and

preferences prior and superior to the shares of such class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of such class;

~~(8)~~ (7) in the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;

~~(9)~~ (8) limit or deny existing preemptive rights of the shares of such class;

~~(10)~~ (9) cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared."

Section 10. Section 35-1-209, MCA, is amended to read:

"35-1-209. Articles of amendment -- contents. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such articles and shall set forth:

(1) the name of the corporation;

(2) the ~~amendment~~ amendments so adopted;

(3) the date of the adoption of the amendment by the shareholders or the board of directors when no shares have

been issued;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or, if no shares have been issued, a statement to that effect;

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

~~(7) if such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.~~"

Section 11. Section 35-1-211, MCA, is amended to read:

"35-1-211. Effect of certificate of amendment. (1) Upon An amendment becomes effective upon the issuance of the

certificate of amendment by the secretary of state, ~~the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly~~ or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as shall be provided for in the articles of amendment.

(2) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders. In the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason."

Section 12. Section 35-1-212, MCA, is amended to read:

"35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain

only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to

all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(ii) file one of such duplicate originals in his

office;

(iii) issue a certificate of amendment to which he shall affix the other duplicate original.

(c) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(4) Upon The amendment becomes effective upon the issuance of the certificate of amendment by the secretary of state, ~~the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly~~ or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as may be provided for in the articles of amendment, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation."

Section 13. Section 35-1-213, MCA, is amended to read:

"35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly

adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide

for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected;.

~~(f)--if-the-restated-articles-of-incorporation-effect-a change--in-the-amount-of-stated-capital,-then-a-statement-of the-manner-in-which-the-same-is-effected--and--a--statement, expressed--in--dollars,--of--the-amount-of-stated-capital-as changed-by-the-restated-articles-of-incorporation.~~"

Section 14. Section 35-1-214, MCA, is amended to read:

"35-1-214. Bylaws -- power in directors -- contents. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation."

Section 15. Section 35-1-301, MCA, is amended to read:

"35-1-301. Corporate name. (1) The corporate name:

(a) shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain an

abbreviation of one of such words;

~~(1)~~(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

~~(2)~~(c) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision does not apply if the applicant files with the secretary of state either of the following:

(i) the written consent of such other corporation or holder of a reserved or registered name to use the name or a deceptively similar name with one or more words added to make such name distinguishable from such other name; or

(ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged or that is formed by the reorganization or consolidation of one or more domestic or

foreign corporations or upon a sale, lease, or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of or is authorized to transact business in this state."

Section 16. Section 35-1-401, MCA, is amended to read:

"35-1-401. Board of directors. (1) ~~The~~ All corporate powers shall be exercised by or under authority of and the business and affairs of a corporation shall be managed by under the direction of a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

(2) A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

(3) (a) In performing his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(ii) counsel, public accountants, or other persons as to matters that the director reasonably believes to be within such person's professional or expert competence; or

(iii) a committee of the board upon which he does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(b) A director may not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

(c) A person who so performs his duties has no liability by reason of being or having been a director of the corporation.

(4) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken is presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to such action with the secretary of the meeting before the adjournment thereof or forwards the dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action."

Section 17. Section 35-1-402, MCA, is amended to read:

"35-1-402. Number, election, and term of directors. (1) The ~~number~~ board of directors of a corporation shall be ~~not less than three~~ consist of one or more members. ~~Subject to such limitation, the~~ The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of

incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified."

Section 18. Section 35-1-404, MCA, is amended to read:

"35-1-404. Place and notice of directors' meetings. (1) Meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated thereby shall

be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors or any committee designated thereby need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

(3) Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time; and participation by such means constitutes presence in person at a meeting."

Section 19. Section 35-1-406, MCA, is amended to read:

"35-1-406. Action by directors without a meeting. (1) Any Unless otherwise provided by the articles of incorporation or bylaws, any action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the

directors or of a committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors or all of the members of the committee, as the case may be, entitled to vote ~~with-respect-to~~ on the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote and may be stated in any articles or document filed with the secretary of state under this chapter."

Section 20. Section 35-1-407, MCA, is amended to read:

"35-1-407. Executive and other committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors~~.~~:

~~(2)--No~~ except that no such committee shall have the authority ~~of-the-board-of-directors-in-reference-to-amending the--articles-of-incorporation,-adopting-a-plan-of-merger-or consolidation,-recommending-to-the--shareholders--the--sale, lease,---exchange,---or---other---disposition---of---all--or substantially-all-the-property-and-assets-of-the-corporation otherwise-than-in--the--usual--and--regular--course--of--its~~

~~business,--recommending--to--the--shareholders--a--voluntary dissolution-of-the-corporation-or-a-revocation--thereof,--or amending-the-bylaws-of-the-corporation,~~ to:

(a) authorize distributions;

(b) approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders;

(c) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof;

(d) amend the bylaws;

(e) approve a plan of merger not requiring shareholder approval;

(f) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or

(g) authorize or approve the issuance or sale of or any contract to issue or sell shares or designate the terms of a series of a class of shares, except that the board of directors, having acted regarding general authorization for the issuance or sale of shares or any contract therefor and, in the case of a series, the designation thereof may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or

other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including without limitation the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the secretary of state under this chapter.

~~(3)~~(2) The designation of any such committee, and the delegation thereto of authority, or the action by such committee pursuant to such authority ~~shall not operate to relieve the board of directors or any member thereof of any responsibility imposed by law~~ does not alone constitute compliance by any member of the board of directors not a member of the committee in question with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances."

Section 21. Section 35-1-408, MCA, is amended to read:

"35-1-408. Vacancies and removal of directors. (1) Any vacancy occurring in the board of directors may be filled by

the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

(2) At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. ~~The~~ Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds of the shares then entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the corporation has fewer than 100 shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

(3) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then

cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which he is a part."

Section 22. Section 35-1-409, MCA, is amended to read:

"35-1-409. Liability of directors in certain cases. ~~(1) In addition to any other liabilities, imposed by law upon directors of a corporation:~~

~~(a)~~ ~~Directors of a corporation~~ a director who vote votes for or assent assents to the ~~declaration of any dividend or other~~ any distribution ~~of the assets of a corporation to its shareholders~~ contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall, unless he complies with the standard provided in this chapter for the performance of the duties of directors, be ~~jointly and severally~~ liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount ~~of such dividend which is paid~~ or the value of such ~~assets which are distributed~~ distribution in excess of the amount of such ~~dividend or~~ distribution which could have been ~~paid or distributed~~ made without a violation of the provisions of this chapter, or [the restrictions in the articles of incorporation.

~~(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions~~

~~of this chapter shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this chapter.~~

~~(c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of or making adequate provision for all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed to the extent that such debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.~~

~~(d) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation or the making of any loan secured by shares of the corporation, except as authorized by other provisions of this chapter, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.~~

~~(2) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented~~

~~to--the--action-taken-unless-his-dissent-shall-be-entered-in the-minutes-of-the-meeting--or--unless--he--shall--file--his written-dissent-to-such-action-with-the-person-acting-as-the secretary--of--the-meeting-before-the-adjournment-thereof-or shall-forward-such-dissent-by-certified-or--registered--mail to--the--secretary--of-the-corporation-immediately-after-the adjournment-of-the-meeting.-Such-right-to-dissent-shall--not apply-to-a-director-who-voted-in-favor-of-such-action.~~

~~(3)--A--director--shall-not-be-liable-under-subsections (1)(a),-(1)(b),-or-(1)(c)-of-this-section-if-he--relied--and acted--in--good--faith--upon--financial--statements--of--the corporation--represented--to--him--to--be--correct--by---the president--or--the-officer-of-such-corporation-having-charge of-its-books-of-account-or-stated-in-a-written-report-by--an independent-public-or-certified-public-accountant-or-firm-of such--accountants--fairly-to-reflect-the-financial-condition of-such-corporation,-nor-shall-he-be-so-liable--if--in--good faith--in--determining--the--amount--available--for-any-such dividend-or-distribution-he-considered-the-assets-to--be--of their-book-value.~~

~~(4)~~(2) Any director against whom a claim shall be asserted under or pursuant to this section for the ~~payment~~ making of a ~~dividend-or-other~~ distribution ~~of-assets-of-a corporation~~ and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted

or received any such ~~dividend--or--assets~~ distribution, knowing such ~~dividend-or~~ distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

~~(5)~~(3) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the any other directors who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in this chapter for the performance of the duties of a director."

NEW SECTION. Section 23. Director -- conflicts of interest. (1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested is either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purposes if:

(a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose

without counting the votes or consents of such interested directors;

(b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent, in which vote or consent such interested directors may participate to the extent that they are also shareholders; or

(c) the contract or transaction is fair and reasonable to the corporation.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

Section 24. Section 35-1-501, MCA, is amended to read:

"35-1-501. Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

~~(2)~~ An ~~annual~~ meeting of the shareholders shall be held ~~at~~ such ~~time~~ as may be provided in the bylaws. If the annual meeting is not held within any 18-month period, the district court with jurisdiction for the location of the corporation's registered office or principal place of

business may, on application of any shareholder, summarily order a meeting to be held. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than ~~one-half~~ one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws."

Section 25. Section 35-1-506, MCA, is amended to read:

"35-1-506. Voting of shares -- proxies. (1) Each outstanding share, regardless of class, shall be entitled to one vote, and each fractional share shall be entitled to a corresponding fractional vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this chapter.

(2) Neither ~~treasury shares--nor~~ shares of its own stock held by the corporation in a fiduciary capacity nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation shall be voted at any meeting or counted in determining the total

number of outstanding shares at any given time.

(3) [a] A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact.

[b] No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy. Every proxy is revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

(c) The authority of the holder of a proxy to act may not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

(d) Except when another provision has been made by written agreement between the parties, the record holder of shares, which he holds as pledgee or otherwise as security or which belong to another, shall issue a proxy to vote or take other action thereon to the pledgor or to such owner of such shares, upon demand therefor and payment of necessary expenses thereof.

(e) A shareholder may not sell his vote or issue a proxy to vote to any person for any sum of money or anything

of value, except as authorized in this section and 35-1-508.

(f) A proxy that is entitled "irrevocable proxy" and that states that it is irrevocable is irrevocable when it is held by any of the following or a nominee of any of the following:

(i) a pledgee;

(ii) a person who has purchased or agreed to purchase the shares;

(iii) a creditor or creditors of the corporation who extend or continue credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit;

(iv) a person who has contracted to perform services as an officer of the corporation, if:

(A) a proxy is required by the contract of employment; and

(B) the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for; or

(v) a person designated by or under an agreement under 35-1-508(3).

(g) Notwithstanding a provision in a proxy stating

that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, the debt of the corporation is paid, the period of employment provided for in the contract of employment has terminated, or the agreement under 35-1-508(3) has terminated; and in a case provided for in (iii) or (iv) of subsection (3)(f), it becomes revocable 5 years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This subsection does not affect the duration of a revocable proxy under subsection (3)(b).

(h) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the certificate representing such shares.

(4) At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal or by distributing such votes on the same

principle among any number of such candidates.

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe or, in the absence of such provision, as the board of directors of such corporation may determine.

(6) Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name.

(7) Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(8) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(9) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(10) On and after the date on which written notice of

redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares."

Section 26. Section 35-1-508, MCA, is amended to read:

"35-1-508. Voting ~~trust------inspection--of--agreement~~ trusts and agreements among shareholders. (1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares for which the voting trust certificates held by each are issued, and such trustee or trustees shall deposit a copy of such record with the

corporation at its registered office.

(2) The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of ~~a--beneficial interest in the~~ record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(3) Agreements among shareholders regarding the voting of their shares are valid and enforceable in accordance with the terms of the agreements. Such agreements are not subject to the provisions of this section regarding voting trusts."

Section 27. Section 35-1-509, MCA, is amended to read:

"35-1-509. Action by shareholders without a meeting. (1) Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the secretary of state under this chapter."

Section 28. Section 35-1-511, MCA, is amended to read:

"35-1-511. Shareholders' preemptive rights. The shareholders of a corporation shall have no preemptive right to acquire unissued ~~or treasury~~ shares of the corporation or obligations of the corporation convertible into such shares, except to the extent, if any, that such right is provided in the articles of incorporation."

NEW SECTION. Section 29. Control of directors by shareholders. (1) A provision in the articles of incorporation otherwise prohibited by law because it improperly restricts the board of directors in its management of the business of the corporation or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them all or any part of such management otherwise within the authority of the board under this chapter shall nevertheless be valid:

(a) if all the incorporators or holders of record of all outstanding shares, whether or not having voting power, have authorized such provision in the articles of incorporation or an amendment thereof; and

(b) if, subsequent to the adoption of such provision,

shares are transferred or issued only to persons who had knowledge or notice thereof or consented in writing to such provision.

(2) A provision authorized by subsection (1) is valid only if no shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

(3) Except as provided in subsection (4), an amendment to strike out a provision authorized by subsection (1) shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or by the holders of such greater proportion of shares as may be required by the articles of incorporation for that purpose.

(4) Alternatively, if a provision authorized by subsection (1) has ceased to be valid under this section, the board may authorize articles of amendment under 35-1-209, eliminating the provision. Such articles shall set forth the event by reason of which the provision ceased to be valid.

(5) The effect of any provision authorized by subsection (1) is to relieve the directors and impose upon the shareholders authorizing the provision or consenting thereto the liability for managerial acts or omissions that

is imposed on directors by this chapter to the extent that and so long as the discretion or powers of the board in its management of corporate affairs is controlled by any such provision.

(6) If the articles of incorporation of any corporation contain a provision authorized by subsection (1), the existence of the provision must be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

Section 30. Section 35-1-601, MCA, is amended to read:

"35-1-601. Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes~~, any or all of which classes may consist of shares with par value or shares without par value~~ with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter or the ~~constitution~~ Constitution of the State of Montana.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special

classes:

(a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(b) entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) having preference over any other class or classes of shares as to the payment of dividends;

(d) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(e) convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation~~, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted~~.

(3) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on such terms and conditions as may be

provided by resolutions of the board of directors."

Section 31. Section 35-1-602, MCA, is amended to read:

"35-1-602. Issuance of shares of preferred or special classes in series -- filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted;

(f) voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the

relative rights and preferences thereof;

(c) the date of adoption of such resolution;

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) return the other duplicate original to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation."

Section 32. Section 35-1-605, MCA, is amended to read:

"35-1-605. ~~Consideration--for~~ Issuance of shares. ~~(1)~~

~~Shares--having--a--par--value--may--be---issued---for---such consideration--expressed--in--dollars,-not-less-than-the-par value-thereof,-as-shall-be-fixed-from-time-to--time--by--the board--of--directors.~~ Subject to any restrictions in the articles of incorporation:

~~(2)~~(1) ~~Shares-without-par-value~~ shares may be issued for such consideration ~~expressed-in-dollars-as-may-be-fixed from-time-to-time-by--the--board--of--directors--unless--the articles--of--incorporation--reserve-to-the-shareholders-the right-to-fix-the-consideration.-In-the-event-that-such-right be-reserved-as-to-any-shares,-the-shareholders-shall,--prior to--the-issuance-of-such-shares,-fix-the-consideration-to-be received-for-such-shares-by-a--vote--of--the--holders--of--a majority--of--all-shares-entitled-to-vote-thereon.~~ as may be authorized by the board of directors establishing a price in money or other consideration, a minimum price, general formula, or method by which the price will be determined; and

(2) upon authorization by the board of directors, the corporation may issue its own shares in exchange for or in conversion of its outstanding shares or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series to effectuate stock dividends or splits, and any such transaction does not require consideration provided that no such issuance of shares of

any class or series may be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation or is authorized by an affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which the distribution is to be made.

~~(3)--Treasury--shares--may--be--disposed--of---by---the corporation--for--such-consideration-expressed-in-dollars-as may-be-fixed-from-time-to-time-by-the-board-of-directors.~~

~~(4)--That-part-of-the-surplus-of-a-corporation-which-is transferred-to-stated-capital-upon-the-issuance-of-shares-as a-share-dividend-shall-be-deemed-to-be-the-consideration-for the-issuance-of-such-shares.~~

~~(5)--In-the-event-of-a-conversion-of-shares-or--in--the event-of-an-exchange-of-shares-with-or-without-par-value-for the-same-or-a-different-number-of-shares-with-or-without-par value--whether-of-the-same-or-a-different-class-or-classes the-consideration-for-the-shares-so-issued--in--exchange--or conversion-shall-be-deemed-to-be:~~

~~(a)--the--stated-capital-then-represented-by-the-shares so-exchanged-or-converted;~~

~~(b)--that-part--of--surplus--if--any--transferred--to stated-capital-upon-the-issuance-of-shares-for-the-shares-so exchanged-or-converted;-and~~

~~(c)--any---additional---consideration---paid---to---the corporation-upon-the-issuance-of-shares-for--the--shares--so exchanged-or-converted.~~"

Section 33. Section 35-1-606, MCA, is amended to read:

"35-1-606. Modes of payment for shares. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, subject to the provisions of 35-1-604, such shares shall be ~~deemed-to-be-fully-paid-and~~ nonassessable.

(2) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive."

Section 34. Section 35-1-607, MCA, is amended to read:

"35-1-607. Stock rights and options. (1) Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options

entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option.

(2) If such rights or options are to be issued to directors, officers, or employees as such of the corporation or of any subsidiary thereof and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan theretofore approved by such a vote of shareholders ~~and set forth or incorporated by reference in the instrument evidencing each such right or option~~.

(3) In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. ~~The price or prices to be received for any shares having a par value other than treasury shares to be issued upon the exercise of such rights or options shall not be less than the par value thereof.~~"

Section 35. Section 35-1-610, MCA, is amended to read:

"35-1-610. ~~Certificates representing shares~~ Shares represented by certificates and uncertificated shares. (1) The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or vice-chairman of the board of directors or the president or a vice-president and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. ~~The~~ Any or all of the signatures ~~of the president or vice-president and the secretary or assistant secretary~~ upon a certificate may be ~~facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or an employee of the corporation~~ facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate or shall state that the corporation will furnish

to any shareholder, upon request and without charge, a full statement of:

(a) the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued; and

(b) if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Each certificate representing shares shall state upon the face thereof:

(a) that the corporation is organized under the laws of this state;

(b) the name of the person to whom issued;

(c) the number and class of shares and the designation of the series, if any, which such certificate represents~~t~~.

~~(d) the par value of each share represented by such certificate or a statement that the shares are without par value.~~

(4) No certificate shall be issued for any share until ~~such share is fully paid~~ the consideration established for its issuance has been paid.

(5) Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to subsections (2) and (3). Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series must be identical."

Section 36. Section 35-1-611, MCA, is amended to read:

"35-1-611. Issuance of fractional shares or scrip. A corporation may ~~but shall not be obliged to~~:

(1) issue ~~a certificate for a fractional~~ fractions of a share, either represented by a certificate or uncertificated;

(2) arrange for the disposition of fractional interests by those entitled thereto;

(3) pay in money the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) ~~and--by-action-of-its-board-of-directors-may~~ issue ~~in-lieu-thereof~~ scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share or an uncertificated full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or subject to any other conditions which the board of directors may deem advisable."

Section 37. Section 35-1-612, MCA, is amended to read:

"35-1-612. ~~Right~~ Power of corporation to acquire ~~and dispose-of~~ its own shares ~~---restrictions~~. (1) A corporation

shall have the ~~right~~ power to ~~purchase,-take,-receive,-or otherwise-acquire,-hold,-own,-pledge,-transfer,-or-otherwise dispose-of~~ its own shares~~.~~ ~~but-purchases-of-its-own-shares,-whether-direct-or-indirect,-shall-be-made-only-to-the-extent of-unreserved--and--unrestricted--earned--surplus--available therefor--and,-if-the-articles-of-incorporation-so-permit-or with-the--affirmative--vote--of--the--holders--of--at--least two-thirds--of--all--shares-entitled-to-vote-thereon,-to-the extent--of--unreserved--and--unrestricted--capital---surplus available--therefor.~~ All of its own shares acquired by a corporation, upon acquisition, constitute authorized but unissued shares unless the articles of incorporation provide that they may not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.

(2) ~~To-the--extent--that--earned--surplus--or--capital surplus-is-used-as-the-measure-of-the-corporation's-right-to purchase-its-own-shares,-such-surplus-shall-be-restricted-so long--as--such--shares-are-held-as-treasury-shares,-and-upon the-disposition-or-cancellation--of--any--such--shares,--the restriction--shall--be--removed--pro-tanto.~~ If the number of authorized shares is reduced by an acquisition, the corporation shall, no later than the time it files its next annual report under this chapter with the secretary of state, file a statement of cancellation showing the reduction in the authorized shares. The statement of

cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall set forth:

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

~~(3) Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:~~

~~(a) eliminating fractional shares;~~

~~(b) collecting or compromising indebtedness to the corporation;~~

~~(c) paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter;~~

~~(d) effecting, subject to the other provisions of this chapter, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.~~

(3) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall,

when all fees and franchise taxes have been paid as prescribed in this chapter:

(a) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) return the other duplicate original to the corporation or its representative.

~~(4) No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent."~~

NEW SECTION. Section 38. Restriction on transfer of shares. (1) A written restriction on the transfer or registration of transfer of shares of a corporation, if permitted by this section and noted conspicuously on the certificate representing such shares, may be enforced against the holder of the restricted shares or any successor or transferee of the holder, including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(2) A restriction on the transfer or registration of transfer of shares of a corporation may be imposed by the articles of incorporation, the bylaws, or an agreement among any number of shareholders or among such holders and the corporation. No restriction so imposed is binding with respect to shares issued prior to the adoption of the restriction unless the holders of the shares are parties to an agreement or voted in favor of the restriction.

(3) A restriction on the transfer of shares of a corporation is permitted by this section if it:

(a) obligates the holder of the restricted shares to offer to the corporation, to any other holders of shares of the corporation, to any other person, or to any combination of the foregoing a prior opportunity, to be exercised within a reasonable time, to acquire the restricted shares;

(b) obligates the corporation, any holder of shares of the corporation, any other person, or any combination of the foregoing to purchase the shares which are the subject of an agreement respecting the purchase and sale of the restricted shares;

(c) requires the corporation or the holder of any class of shares of the corporation to consent to any proposed transfer of the restricted shares or to approve the proposed transferee of the restricted shares; or

(d) prohibits the transfer of the restricted shares to

designated persons or classes of persons, and the designation is not manifestly unreasonable.

(4) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under subchapter S of the United States Internal Revenue Code (26 U.S.C.A. 1371, et seq.) is conclusively presumed to be for a reasonable purpose.

(5) Any other lawful restriction on transfer or registration of transfer of shares is permitted by this section.

(6) Except as otherwise provided in this section, the transfer of shares and the certificates representing such shares are governed by Title 30, chapter 8.

NEW SECTION. Section 39. Distributions to shareholders. (1) Subject to any restrictions in the articles of incorporation, the board of directors may authorize and the corporation may make distributions, except that no distribution may be made if, after giving effect thereto, either:

(a) the corporation would be unable to pay its debts as they become due in the usual course of its business; or

(b) the corporation's total assets would be less than the sum of its total liabilities and, unless the articles of incorporation permit otherwise, the maximum amount that then

would be payable in any liquidation in respect of all outstanding shares having preferential rights in liquidation.

(2) Determinations under subsection (1)(b) may be based upon:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(3) In the case of a purchase, redemption, or other acquisition of a corporation's shares, the effect of a distribution must be measured as of the date money or other property is transferred or debt is incurred by the corporation or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, whichever is earlier. In all other cases, the effect of a distribution shall be measured as of the date of its authorization if payment occurs within 120 days after the authorization date or as of the date of payment if payment occurs more than 120 days after the authorization date.

(4) Indebtedness of a corporation incurred or issued to a shareholder in a distribution in accordance with this section must be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the

extent subordinated by agreement.

Section 40. Section 35-1-801, MCA, is amended to read:

"35-1-801. Procedure for merger, consolidation, and share exchange. (1) (a) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

~~(2)~~ (b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

~~(a)~~ (i) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

~~(b)~~ (ii) the terms and conditions of the proposed merger;

~~(c)~~ (iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving corporation or any other corporation or, in whole or in part, into cash or other property;

~~(d)~~ (iv) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

~~(e)~~ (v) such other provisions with respect to the

proposed merger as are deemed necessary or desirable.

(2) (a) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each board, approve a plan of consolidation setting forth:

(i) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(ii) the terms and conditions of the proposed consolidation;

(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or any other corporation or, in whole or in part, into cash or other property;

(iv) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; and

(v) such other provisions with respect to the proposed consolidation as are considered necessary or desirable.

(3) (a) All the issued or all the outstanding shares

of one or more classes of any domestic corporation may be acquired through the exchange of all shares of such class or classes by another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of exchange setting forth:

(i) the name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation;

(ii) the terms and conditions of the proposed exchange;

(iii) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or, in whole or in part, for cash or other property; and

(iv) such other provisions with respect to the proposed exchange as are considered necessary or desirable.

(c) The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation, through a voluntary exchange or otherwise, by agreement with the shareholders."

Section 41. Section 35-1-803, MCA, is amended to read:

"35-1-803. Approval of shareholders required. (1) The board of directors of each corporation, in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange, upon approving such plan of merger, ~~or~~ plan of consolidation, or exchange, shall by resolution direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger, ~~or~~ consolidation, or exchange. A copy or a summary of the plan of merger, ~~or plan of~~ consolidation, or exchange, as the case may be, shall be included in or enclosed with such notice.

~~(3)~~ At each such meeting a vote of the shareholders shall be taken on the proposed plan ~~of merger or consolidation~~. The plan ~~of merger or consolidation~~ shall be approved upon receiving the affirmative vote of the holders

of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan ~~of merger or consolidation~~ shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan ~~of merger or consolidation, as the case may be,~~ contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class or, in the case of an exchange, if the class is included in the exchange.

(4) After ~~such~~ the approval by a vote of the shareholders of each ~~corporation~~ of these corporations and at any time prior to the filing of the articles of merger, ~~or~~ consolidation, or exchange, the merger, ~~or~~ consolidation, or exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan ~~of merger or consolidation~~.

(5) (a) Notwithstanding the provisions of subsections (1) through (3), submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not

required if:

(i) the articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger;

(ii) each holder of shares of the surviving corporation that were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after;

(iii) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of voting shares outstanding immediately before the merger; and

(iv) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of participating shares outstanding immediately before the merger.

(b) As used in subsection (5)(a):

(i) "voting shares" means shares which entitle their holders to vote unconditionally in elections of directors;

(ii) "participating shares" means shares which entitle their holders to participate without limitation in distribution of earnings or surplus."

Section 42. Section 35-1-804, MCA, is amended to read:

"35-1-804. Articles of merger, ~~or~~ consolidation, or exchange -- contents -- filing. (1) Upon ~~such approval~~ receiving the approvals required by 35-1-801 and 35-1-803, articles of merger, ~~or~~ articles of consolidation, or exchange shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers of each corporation signing such articles and shall set forth:

(a) the plan of merger, ~~or the plan of~~ consolidation, or exchange;

(b) as to each corporation, either:

(i) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(ii) a statement that the vote of shareholders is not required by virtue of ~~35-1-804(5)~~ 35-1-803(5); and

(c) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against such plan, respectively, and, if the shares of any

class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) Duplicate originals of the articles of merger, ~~or articles of~~ consolidation, or exchange shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as prescribed in this chapter ~~prescribed~~:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of merger, ~~or a certificate of~~ consolidation, or exchange to which he shall affix the other duplicate original.

(3) The certificate of merger, ~~or certificate of~~ consolidation, or exchange, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving, ~~or new,~~ or acquiring corporation, ~~as the case may be,~~ or its representative."

Section 43. Section 35-1-805, MCA, is amended to read:

"35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the

outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation;

(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or ~~the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation~~ of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of its officers signing such articles and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of

the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) issue a certificate of merger to which he shall affix the other duplicate original.

(5) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative."

Section 44. Section 35-1-806, MCA, is amended to read:

"35-1-806. Effect of merger, or consolidation, or

exchange. (1) ~~Upon~~ A merger, consolidation, or exchange becomes effective upon the issuance of ~~the~~ a certificate of merger, ~~or the certificate of~~ consolidation, or exchange by the secretary of state, ~~the merger or consolidation shall be effected~~ or on a later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as provided for in the plan.

(2) When ~~such~~ a merger or consolidation has ~~been effected~~ become effective:

(a) ~~The~~ the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) ~~The~~ the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) ~~Such~~ the surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) ~~Such~~ the surviving or new corporation shall thereupon and thereafter possess all the rights, privileges,

immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed. The title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) ~~Such~~ the surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) ~~In~~ in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its

articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

(3) When a merger, consolidation, or exchange has become effective, the shares of the corporation or corporations party to the plan that are to be converted or exchanged under the terms of the plan shall cease to exist, in the case of a merger or consolidation, or be considered to be exchanged, in the case of an exchange. The holders of such shares are thereafter entitled to only the shares, obligations, other securities, cash, or other property into which they have been converted or for which they have been exchanged in accordance with the plan and subject to any rights under 35-1-810."

Section 45. Section 35-1-807, MCA, is amended to read:

"35-1-807. Merger, or consolidation, or exchange of shares between of domestic and foreign corporations. (1) One or more foreign corporations and one or more domestic corporations may be merged, or consolidated, or participate in an exchange in the following manner if such merger, or consolidation, or exchange is permitted by the laws of the

state under which each such foreign corporation is organized:

~~(a)~~(1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger, or consolidation, or exchange, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

~~(b)~~(2) If the surviving or new corporation, ~~as the case may be,~~ in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

~~(i)~~(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

~~(ii)~~(b) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

~~(iii)~~(c) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

~~(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or new corporation is to be governed by the laws of this state; if the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.~~

~~(3) At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.~~"

Section 46. Section 35-1-808, MCA, is amended to read:

"35-1-808. Sale of assets in regular course of business and mortgage or pledge of assets. The sale, lease, exchange, or other disposition of all or substantially all the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or

not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such case no authorization or consent of the shareholders shall be required."

Section 47. Section 35-1-809, MCA, is amended to read:

"35-1-809. Sale of assets not in regular course of business -- shareholder approval. A sale, lease, exchange, or other disposition of all or substantially all the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless in its discretion may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third

parties under any contracts relating thereto, without further action or approval by shareholders.

~~(5)--The-shareholders-of-a-corporation-may,-by--a--vote of--the--holders--of-the-number-of-shares-required-to-change the-articles-of--incorporation--of--such--corporation--at--a meeting--duly--called--upon--not--less-than-30-days'-notice, amend-the-articles-of-incorporation-to--give--the--board--of directors--general--authority--to--sell,-lease,-exchange,-or otherwise--dispose--of--all--or--substantially--all--of--the property--and--assets,--with--or-without-the-good-will,-of-a corporation-upon-such-conditions-and-for-such-consideration, which-may-consist-in-whole-or-in-part-of-money-or--property, real-or-personal,-including-shares-of-any-other-corporation, domestic--or-foreign,-as-shall-be-authorized-by-the-board-of directors."~~

Section 48. Section 35-1-810, MCA, is amended to read:

"35-1-810. Right of shareholders to dissent and obtain payment for shares. (1) Any shareholder of a corporation shall have the right to dissent from, and to obtain payment for his shares in the event of, any of the following corporate actions:

(a) any plan of merger or consolidation to which the corporation is a party, except as provided in subsection (3); or

(b) any sale or exchange of all or substantially all

of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within 1 year after the date of sale;

(c) any plan of exchange to which the corporation is a party as the corporation whose shares are to be acquired;

(d) any amendment of the articles of incorporation which affects the rights appurtenant to the shares of the dissenting shareholder materially and adversely in that it:

(i) alters or abolishes a preferential right of such shares;

(ii) creates, alters, or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(iii) alters or abolishes a preemptive right of the holder of such shares to acquire shares or other securities;

(iv) excludes or limits the right of the holder of such shares to vote on any matter or to cumulate his votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting

rights; or

(e) any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws, or a resolution of the board of directors directs that dissenting shareholders have a right to obtain payment for their shares.

(2) (a) A ~~shareholder may dissent~~ record holder of shares may assert dissenters' rights as to less than all of the shares registered in his name only if he dissents with respect to all the shares beneficially owned by any one person and discloses the names and addresses of the persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his behalf and shall be treated as a dissenting shareholder under the terms of this section and ~~35-1-812~~ [SECTION 49] if he submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

(3) The ~~provisions of~~ right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if ~~such corporation is on~~

~~the date of the filing of the articles of merger the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger or if~~ a vote of the shareholders of such corporation is not necessary to authorize such merger.

(4) A shareholder of a corporation who has a right under this section to obtain payment for his shares has no right at law or in equity to attack the validity of the corporate action that gives rise to his right to obtain payment nor to have the action set aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation."

NEW SECTION. Section 49. Procedures for protection of dissenters' rights. (1) As used in this section:

(a) "Dissenter" means a shareholder or beneficial owner who is entitled to and does assert dissenters' rights under 35-1-810 and who has performed every act required up to the time involved for the assertion of such rights.

(b) "Corporation" means the issuer of the shares held by the dissenter before the corporate action, or the successor of that issuer by merger or consolidation.

(c) "Fair value" of shares means their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation

or depreciation in anticipation of such corporate action unless such exclusion would be inequitable.

(d) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at such rate as is fair and equitable under all the circumstances.

(2) If a proposed corporate action which would give rise to dissenters' rights under 35-1-810(1) is submitted to a vote at a meeting of shareholders, the notice of meeting shall notify all shareholders that they have or may have a right to dissent and obtain payment for their shares by complying with the terms of this section and shall be accompanied by a copy of 35-1-810 and this section.

(3) If the proposed corporate action is submitted to a vote at a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for his shares must file with the corporation, prior to the vote, a written notice of intention to demand that he be paid fair compensation for his shares if the proposed action is effectuated and shall refrain from voting his shares in approval of such action. A shareholder who fails in either respect acquires no right to payment for his shares under this section or 35-1-810.

(4) If the proposed corporate action is approved by

the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send a notice of the adoption of the plan of corporate action to all shareholders who are entitled to dissent and demand payment for their shares. The notice shall:

(a) state where and when a demand for payment must be sent and certificates of certificated shares must be deposited in order to obtain payment;

(b) inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received;

(c) supply a form for demanding payment, which includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares; and

(d) be accompanied by a copy of 35-1-810 and this section. The time set for the demand and deposit may not be less than 30 days from the mailing of the notice.

(5) A shareholder who fails to demand payment or fails (in the case of certificated shares) to deposit certificates

as required by a notice pursuant to subsection (4) has no right under this section or 35-1-810 to receive payment for his shares. If the shares are not represented by certificates, the corporation may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action or the release of restrictions under the terms of subsection (6). The dissenter retains all other rights of a shareholder until those rights are modified by effectuation of the proposed corporate action.

(6) (a) Within 60 days after the date set for demanding payment and depositing certificates, if the corporation has not effectuated the proposed corporate action and remitted payment for shares pursuant to subsection (6)(c), it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.

(b) When uncertificated shares have been released from transfer restrictions and deposited certificates have been returned, the corporation may at any later time send a new notice conforming to the requirements of subsection (4), with like effect.

(c) Immediately upon effectuation of the proposed corporate action or upon receipt of demand for payment if

the corporate action has already been effectuated, the corporation shall remit to dissenters who have made demand and, if their shares are certificated, have deposited their certificates, the amount that the corporation estimates to be the fair value of the shares, with interest if any has accrued. The remittance shall be accompanied by:

(i) the corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the date of remittance, together with the latest available interim financial statement;

(ii) a statement of the corporation's estimate of fair value of the shares; and

(iii) a notice of the dissenter's right to demand supplemental payment.

(7) (a) If the corporation fails to remit as required by subsection (6) or if the dissenter believes that the amount remitted is less than the fair value of his shares or that the interest is not correctly determined, he may send the corporation his own estimate of the value of the shares or of the interest and demand payment of the deficiency.

(b) If the dissenter does not file such an estimate within 30 days after the corporation's mailing of its remittance, he shall be entitled to no more than the amount remitted.

(8) (a) Within 60 days after receiving a demand for

payment pursuant to subsection (7), if any such demands for payment remain unsettled, the corporation shall file in an appropriate court a petition requesting that the fair value of the shares and interest thereon be determined by the court.

(b) An appropriate court is the district court in the county of this state where the registered office of the corporation is located. If, in the case of a merger, consolidation, or exchange of shares, the corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the foreign corporation was last located.

(c) All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each such dissenter. If a dissenter is a nonresident, the copy may be served on him by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power as may be specified in the order of their appointment

or in any amendment thereof. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.

(e) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.

(f) If the corporation fails to file a petition as provided in subsection (8)(a), each dissenter who made a demand and who has not already settled his claim against the corporation shall be paid by the corporation the amount demanded by him, with interest, and may sue therefor in an appropriate court.

(9) (a) The costs and expenses of any proceeding under subsection (8), including the reasonable compensation and expenses of appraisers appointed by the court, shall be determined by the court and assessed against the corporation, except that any part of the costs and expenses shall be apportioned and assessed as the court may consider equitable against all or some of the dissenters who are parties and whose action in demanding supplemental payment the court finds to be arbitrary, vexatious, or not in good faith.

(b) Fees and expenses of counsel and of experts for the respective parties may be assessed as the court

considers equitable against the corporation and in favor of any or all dissenters if the corporation failed to comply substantially with the requirements of this section. The fees and expenses shall be assessed against either the corporation or a dissenter in favor of any other party if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section and 35-1-810.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and should not be assessed against the corporation, it may award to these counsel reasonable fees, to be paid out of the amounts awarded to the dissenters who were benefited.

(10) (a) Notwithstanding the foregoing provisions of this section, the corporation may elect to withhold the remittance required by subsection (6) from any dissenter with respect to shares of which the dissenter, or the person on whose behalf the dissenter acts, was not the beneficial owner on the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. With respect to such shares, the corporation shall, upon effectuating the corporate action, state to each dissenter its estimate of the fair value of the shares,

state the rate of interest to be used, explaining the basis thereof, and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.

(b) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, he may, within 30 days after the date of mailing of the corporation's offer, mail the corporation his own estimate of fair value and interest and demand their payment. If the dissenter fails to do so, he is entitled to no more than the corporation's offer.

(c) If the dissenter makes a demand as provided in subsection (b), the provisions of subsections (8) and (9) apply to further proceedings on the dissenter's demand.

Section 50. Section 35-1-901, MCA, is amended to read:

"35-1-901. Voluntary dissolution by incorporators or initial board of directors -- filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time ~~within 2 years after the date of the issuance of its certificate of incorporation~~ in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators or initial board of directors and verified by them and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid;

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of dissolution to which he shall affix the other duplicate original.

(3) The certificate of dissolution, together with the

duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, the board of directors, or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease."

Section 51. Section 35-1-1002, MCA, is amended to read:

"35-1-1002. Activities not to be considered transacting business. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state for the purposes of this chapter by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to

its securities;

(5) effecting sales through independent contractors;

(6) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(7) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property ~~if there is no activity conducted by the out-of-state borrower or lender with respect to the loan except periodic inspection of the security~~;

(8) securing or collecting debts or enforcing any rights in property securing the same;

(9) transacting any business in interstate commerce;

(10) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature."

Section 52. Section 35-1-1006, MCA, is amended to read:

"35-1-1006. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) shall contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words or such corporation shall, for use in this state,

add at the end of its name one of such words or an abbreviation thereof;

~~(i)~~(2) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

~~(2)~~(3) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision does not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(a) a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic corporation, to that of any foreign corporation authorized to transact business in this state, or to any name reserved or registered as provided in this chapter and which fictitious name is registered as an assumed business name under the provisions of ~~30-13-203~~

TITLE 30, CHAPTER 13, PART 2;

(b) the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(c) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this state."

Section 53. Section 35-1-1007, MCA, is amended to read:

"35-1-1007. Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise complied with the provisions of ~~this chapter~~ 35-1-1006."

Section 54. Section 35-1-1008, MCA, is amended to read:

"35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state,

shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

~~(b)~~(c) the date of incorporation and the period of duration of the corporation;

~~(c)~~(d) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

~~(d)~~(e) the address of the ~~proposed~~ registered office of the corporation in this state and the name of its ~~proposed~~ registered agent in this state at such address;

~~(e)~~(f) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

~~(f)~~(g) the names and respective addresses of the directors and officers of the corporation;

~~(g)~~(h) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, ~~par value of shares, shares without par value,~~ and

series, if any, within a class;

~~(h)~~(i) a statement of the aggregate number of issued shares, itemized by classes~~, par value of shares, shares without par value~~, and series, if any, within a class; and

~~(i) a statement, expressed in dollars, of the amount of stated capital of the corporation as defined in this chapter~~;

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such application."

Section 55. Section 35-1-1009, MCA, is amended to read:

"35-1-1009. Filing of application -- issuance of certificate of authority. (1) Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and

all amendments thereto, duly ~~certified by manual or facsimile signature~~ authenticated by the proper officer of the state or country of incorporation.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(c) issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

(3) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative."

Section 56. Section 35-1-1015, MCA, is amended to read:

"35-1-1015. Filing required for amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the

office of the secretary of state a copy of such amendment, duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority."

Section 57. Section 35-1-1017, MCA, is amended to read:

"35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its

registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class, as of the date of such application;

(g) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class, as of the date of such application;

~~(f)~~(h) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to said application to the effect that the department is satisfied from the available evidence that all such taxes imposed have been paid. The issuance of such certificate does not relieve the corporation from liability for any taxes, penalties, or

interest due the state of Montana; and

(i) such additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by such foreign corporation as prescribed by this chapter.

(2) The application for withdrawal shall be made ~~in a~~ form on forms prescribed and furnished by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the application or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him."

Section 58. Section 35-1-1101, MCA, is amended to read:

"35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered

agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by ~~classes, par value of shares, shares without par value,~~ class and series, if any, within a each class; and

(f) a statement of the aggregate number of issued shares, itemized by ~~classes, par value of shares, shares without par value,~~ class and series, if any, within a each class.

~~(g) a statement, expressed in dollars, of the amount of stated capital of the corporation as defined in this chapter.~~

(2) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation

located within this state and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12 months ended on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If on December 31 preceding the time herein provided for the filing of such report, the corporation had not been authorized to transact business in this state for a period of 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in this state and such December 31. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subsection need not be set forth in such report.

(3) Such annual report must be ~~in--a--form~~ on forms prescribed by the secretary of state. The information therein contained must be given as of the date of the execution of the report, ~~--except--as--to--the-information required-by-subsection-(1)(g)-which-must-be-given-as-of--the close--of--business--on--December-31-next-preceding-the-date herein-provided-for-the-filing-of-such-report.~~ It must be executed by the corporation by its president, a

vice-president, secretary, an assistant secretary, or treasurer and verified by the officer executing the report, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation and verified by such receiver or trustee."

Section 59. Section 35-1-1202, MCA, is amended to read:

"35-1-1202. ~~Fees--for--filing--documents--and--issuing certificates.--The--secretary--of--state--shall--charge--and collect-for:~~

~~(1)--filing--articles--of--incorporation--and-issuing-a certificate-of-incorporation,-$20;~~

~~(2)--filing--articles--of--amendment--and---issuing---a certificate-of-amendment,-$20;~~

~~(3)--filing--restated--articles--of--incorporation--and issuing-a-restated-certificate-of-incorporation,-$20;~~

~~(4)--filing-articles-of--merger--or--consolidation--and issuing-a-certificate-of-merger-or-consolidation,-$20;~~

~~(5)--filing-an-application-to-reserve-a-corporate-name, $2;~~

~~(6)--filing---a---notice--of--transfer--of--a--reserved corporate-name,-$2;~~

~~(7)--filing--a--statement--of--change--of--address---of registered--office--or--change-of-registered-agent,-or-both, $2;~~

~~(8)--filing-a--statement--of--the--establishment--of--a series-of-shares,-$5;~~

~~(9)--filing--a-statement-of-cancellation-of-shares,-$5;~~

~~(10)-filing-a-statement-of-reduction-of-stated-capital, $5;~~

~~(11)~~(9)--filing-a-statement-of-intent-to-dissolve,--$2;

~~(12)~~(10)-filing--a-statement-of-revocation-of-voluntary dissolution-proceedings,-$2;

~~(13)~~(11)-filing-articles-of-dissolution-and--issuing--a certificate-of-dissolution,-$5;

~~(14)~~(12)-filing-an-application-of-a-foreign-corporation for--a-certificate-of-authority-to-transact-business-in-this state-and-issuing-a-certificate-of-authority,-$20;

~~(15)~~(13)-filing-an-application-of-a-foreign-corporation for-an-amended-certificate-of-authority-to-transact-business in--this--state--and--issuing--an--amended--certificate---of authority,-$20;

~~(16)~~(14)-filing--a-copy-of-an-amendment-to-the-articles of--incorporation--of--a--foreign--corporation---holding---a certificate-of-authority-to-transact-business-in-this-state, $10;

~~(17)~~(15)-filing--a--copy--of--articles--of--merger-of-a foreign-corporation-holding-a-certificate--of--authority--to transact-business-in-this-state,-$20;

~~(18)~~(16)-filing--an--application--for--withdrawal--of-a

foreign-corporation-and-issuing-a-certificate-of-withdrawal, $5;

~~(19)~~(17)-filing-an-annual-report,-$5;

~~(20)~~(18)-filing-any-other-statement-or--report,--except an--annual-report,-of-a-domestic-or-foreign-corporation,-$2.

SECRETARY OF STATE TO ESTABLISH FEES COMMENSURATE WITH COSTS. THE SECRETARY OF STATE SHALL ESTABLISH FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES AS REQUIRED BY THIS CHAPTER. THE FEES MUST BE REASONABLY RELATED TO THE COSTS OF PROCESSING THE DOCUMENTS AND CERTIFICATES. THE SECRETARY OF STATE SHALL MAINTAIN RECORDS SUFFICIENT TO SUPPORT THE FEES ESTABLISHED UNDER THIS SECTION."

Section 60. Section 35-1-1205, MCA, is amended to read:

"35-1-1205. License fees payable by foreign corporation. (1) The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state the sum of $50 as an initial license fee.

(2) Thereafter the secretary of state shall fix the license fee for each foreign corporation as follows:

(a) He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the preceding section if it had authorized shares

~~having-a-par-value-of-$100-per-share~~, in an amount equal to the ~~stated--capital~~ number of authorized shares of the reporting foreign corporation shown by its filed annual report.

(b) Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report.

(c) From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

(3) The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license fee shall be paid by the corporation to the secretary of state within 30

days after the mailing of the notice. Failure to pay such additional license fee within said 30-day period shall render such corporation liable to the secretary of state for a penalty equal to 10% of the amount of the additional license fee, together with interest at the rate of 1/2 of 1% per month on the fee plus penalty until paid.

(4) Foreign corporations which entered Montana for the transaction of business prior to December 31, 1968, shall be entitled to employ within this state an amount of ~~stated~~ capital equal to the greatest amount employed in the state during the period of their qualification prior to December 31, 1968, without the payment of additional fees."

Section 61. Codification instruction. Sections 4, 5, 23, 29, 38, 39, and 49 are intended to be codified as an integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to sections 4, 5, 23, 29, 38, 39, and 49.

Section 62. Repealer. Sections 35-1-608, 35-1-613 through 35-1-616, 35-1-701 through 35-1-705, 35-1-802, and 35-1-811, MCA, are repealed.

-End-